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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 13, 2024, 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 Northeast Water Quality Management (WQM) Plan. The amendment, identified as KRE Harding Residential (Program Interest No. 435442, Activity No. AMD200007) expands the sewer service area (SSA) of the Woodland Sewage Treatment Plant (STP) (NJPDES No. NJ0024929) by 9.3 acres to serve a proposed 96-unit residential development with a clubhouse and pool. The proposed project will be located on Block 23.02, Lot 5 in Harding Township, Morris County. The proposed project will generate a projected wastewater flow of 27,925 gallons per day (gpd) based on flow calculated in accordance with N.J.A.C. 7:14A-23.3.

Preliminary notice was published in the New Jersey Register on November 7, 2022, at 54 N.J.R. 2106(a) and a public hearing was held by the Department on March 9, 2023. Comments were received during the public comment period. A summary of the comments and Department responses are provided at the end of this notice. This notice represents the Department's determination that the amendment is compliant with the 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 Harding Township, Morris Township, the Morris County Board of County Commissioners, and the New Jersey Highlands Council. Harding Township adopted Resolution TC 22-198 on November 14, 2022, consenting to the proposed amendment. Morris Township adopted Resolution No. 234-22 on November 9, 2022, consenting to the proposed amendment. Morris County, in an email dated November 1, 2022, took no position on the amendment. The New Jersey Highlands Council, in an email dated November 1, 2022, reaffirmed their stance in a letter dated March 21, 2022, which found the project consistent with the Highlands Regional Master Plan (RMP).

In accordance with N.J.A.C. 7:15-3.3(b), site specific amendments are limited to proposed alterations 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 would generate more than 20,000 gpd of wastewater flow. In accordance with N.J.A.C. 7:15-4.5(b)1, the existing wastewater flow at the Woodland STP, calculated as the highest consecutive 12-month rolling average during the five-year period preceding the amendment application (October 2015 to November 2020), was determined to be 1.06 million gallons per day (MGD) between July 2018 and June 2019 based on NJPDES Discharge Monitoring Reports reported in DEP Data Miner (https://njems.nj.gov/DataMiner). The Woodland STP is currently permitted to discharge up to 2

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MGD under NJPDES Permit No. NJ0024929. As such, the Woodland STP currently has capacity for the proposed project.

The proposed project is located within the Highlands Region, as defined in the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-7.a. As delineated in the Highlands Regional Master Plan (RMP), the proposed project property is located within the Protection Zone of the Highlands planning area. Harding Township has not opted to conform with the Highlands RMP. However, pursuant to Executive Order 114 (2008), the Highlands Council reviewed the proposed amendment for consistency with the Net Water Availability Provisions of the RMP. In a letter dated April 22, 2021, the Highlands Council determined that the proposed project is consistent with the RMP, with specified conditions. Because the project is located within a HUC14 with a Net Water Availability deficit, conditions on the project's consistency include development of a municipal-wide Water Use and Conservation Management Plan (WUCMP) by Harding Township and a Site-Specific Water Deficit Mitigation Plan to offset the calculated mitigation target of 34,293 gpd of consumptive water use. In a letter dated March 21, 2022, the Highlands Council determined that the two conditions had been met and the project was consistent with the RMP. The applicant is proposing several water use mitigation measures including low-flow fixtures and appliances, green stormwater infrastructure, native species planting, smart technology irrigation systems, and the retrofit of an existing stormwater basin within Harding Township.

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

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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 https://gisdata-njdep.opendata.arcgis.com 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:

- The Department determined that the expanded SSA contains areas mapped as endangered or threatened wildlife species habitat Rank 5 for Northern Myotis, Indiana Bat, and Wood Turtle on the Department's Landscape Maps 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. Additionally, in response to comments received during the public comment period regarding Barred Owl habitat, the Department reviewed all available data and determined that based on Landscape mapping methodology, the project site may be considered suitable habitat for the Barred Owl as well. Pursuant to N.J.A.C. 7:15-4.4(k), the applicant submitted a Habitat Impact Assessment (HIA) for the Indiana Bat and Northern Myotis, prepared pursuant to N.J.A.C. 7:15-4.7. The Department concurred with the findings of the HIA that the amendment area will result in insignificant and/or discountable impacts to the maintenance of local breeding, resting, and feeding of the endangered and threatened wildlife species. Surveys of the project site found the successional forest to be of marginal habitat value, that no critical habitats for either species were present due to limited

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appropriate roost trees and limited foraging area, and the extent of available habitat in nearby areas compared to the loss of 9.3 acres from this project, adjacent to dense commercial development and an Interstate highway, are largely discountable. Additionally, approximately 6.3 acres of the project are to be placed under a conservation restriction. The conservation restriction runs with the property and is binding on all successive owners, their agents and assigns, and was executed, filed and recorded with the Morris County Clerk on June 20, 2024. Tree clearing is restricted during the active season from April 1 until September 30. For wood turtle, Department review of the property concluded that the onsite wetlands and associated habitat were largely inaccessible to wood turtles documented along Catfish Brook on the eastern side of Interstate 287. There is no stream corridor access from the site to provide the necessary characteristics to support hibernating wood turtles. As a result, the site was considered to be unsuitable habitat for the species and impacts to wood turtle habitat from this project would largely be insignificant or discountable. For Barred owl, a Habitat Suitability Determination (HSD) was submitted in accordance with N.J.A.C. 7:15-4.6. The Department concurred with the findings of the HSD which concluded that the onsite habitat did not provide any potential nesting opportunities and that highway noise would limit use of the site for foraging. The associated forest complex site and the surrounding landscape of residential, commercial, and major highway further degraded the quality of the habitat to the extent that use would be unlikely for any significant period of time by the Barred Owl.

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- The Department determined that the expanded 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 expanded 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 there are wetlands located on the project site based on the "Wetlands 2012" GIS data layer in accordance with N.J.A.C. 7:15-4.4(e)4; however, pursuant to N.J.A.C. 7:15-4.4(j)3, the applicant provided a Freshwater Wetlands Letter of Interpretation (LOI)/Line Verification (File #1413-07-0007.1/FWW160001) confirming that there are no wetlands within the expanded sewer service area. Additionally, the onsite wetlands are located within the previously mentioned conservation restriction area.
- The Department determined that the expanded 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 (USEPA) 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. 7:15-4.4(g).

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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. The Harding Township Planning Board approved the preliminary and final major site plan Application No. PB01-21 for the proposed project on September 27, 2021. Morris County took no position on the project.

The following persons commented during the public comment period.

1. Elliott Ruga, Policy and Communications Director, Highlands Coalition in a letter dated March 10, 2023.
2. Amy Hansen, Policy Manager, New Jersey Conservation Foundation in a letter dated March 23, 2023.
3. Sally Rubin, Executive Director, Great Swamp Watershed Association in a letter dated March 3, 2023.
4. Alicia Jo Gertler in an email dated February 16, 2023.
5. Laurence Ibrahim Aibo in an email dated February 21, 2023.
6. Ming Rui in an email dated February 21, 2023.
7. Kristin Elliott in an email dated February 27, 2023.
8. Teri G in an email dated March 27, 2023.
9. Nancy Critchley in a letter dated February 27, 2023.
10. Rebecca Canright in an email dated March 1, 2023.
11. Rebecca Canright in an email dated March 23, 2023.
12. Nicholas Homyak in an email dated March 2, 2023.
13. Maria McCoy in an email dated March 3, 2023.
14. Laura Graham in an email dated March 3, 2023.
15. Lara Mendenhall in an email dated March 3, 2023.
16. Hazel England, Director of Education and Stewardship, Great Swamp Watershed Association in a letter dated March 21, 2023.
17. Mark and Zinnia Cardamomum in an email dated March 4, 2023.
18. Bill Miller in an email dated March 4, 2023.
19. Ralph Jones in an email dated March 4, 2023.
20. Gerry Kerwin in an email dated March 5, 2023.
21. Sofia Mendenhall in an email dated March 5, 2023.
22. Kathleen Schwartz in an email dated March 6, 2023.
23. Sandra LaVigne, Director of Water Quality Programs, Great Swamp Watershed Association in a letter dated March 20, 2023.
24. Leonard Berkowitz in an email dated March 7, 2023.
25. Michael T Pietch in an email dated March 7, 2023.

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26. Lynne Applebaum in an email dated March 8, 2023.
27. Miriam Zukoff in an email dated March 8, 2023.
28. Elisabeth and Martin McHugh in an email dated March 8, 2023.
29. Marian DeSimone in an email dated March 8, 2023.
30. Ginger Van Ryzin, Great Swamp Watershed Association in an email dated March 8, 2023.
31. Taylor Kirby in a letter dated March 2023.
32. Wade Kirby, Director of Development, Great Swamp Watershed Association in a letter dated March 2023.
33. Reade Kirby in a letter dated March 2023.
34. Linda Kirby in a letter dated March 2023.
35. Croft Kirby in a letter dated March 2023.
36. Michael Dee, Trustee, Great Swamp Watershed Association in an email dated March 9, 2023.
37. William Needham in a letter dated March 9, 2023.
38. Sharon Coughlin in an email dated March 9, 2023.
39. Julie Houbolt in an email dated March 9, 2023.
40. Catherine Keim in an email dated March 9, 2023.
41. Kathy Pfeil, Advisory Council Member, Great Swamp Watershed Association in an email dated March 10, 2023.
42. Alan Moore in an email dated March 11, 2023.
43. Heidi Schleifer in an email dated March 11, 2023.
44. Lynn L. Siebert, President, Burnham Park Association in a letter dated March 10, 2023.
45. Jennifer Nielsen in an email dated March 11, 2023.
46. Frank H. Stillinger, Advisory Council Member, Great Swamp Watershed Association in an email dated March 11, 2023.
47. Dorothea Stillinger, Chair of the Land Preservation and Advocacy Committee, Great Swamp Watershed Association in an email dated March 11, 2023.
48. Henry Klingeman in an email dated March 12, 2023.
49. Russ Furnani, Advisory Council and Stewardship Committee Member, Great Swamp Watershed Association in an email dated March 12, 2023.
50. Marion Filler in an email dated March 12, 2023.
51. Lynn Miles in an email dated March 13, 2023.
52. Lisa Florio in an email dated March 13, 2023.
53. Nicole Schenk in an email dated March 13, 2023.
54. Jeff Willis in an email dated March 13, 2023.
55. Robin Trynin in an email dated March 14, 2023.
56. Leslie Thorsen Bensley in an email dated March 14, 2023.
57. Vanetta Solomon in an email dated March 14, 2023.
58. Kimberly Tulloch in a letter dated March 13, 2023.
59. Joseph Attamante in a letter dated March 15, 2023
60. Ent The Guard in an email dated March 15, 2023.
61. Celeste Fondaco, Chatham Township Environmental Commission in a letter dated March 10, 2023.

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62. Susan Cavanaghin an email dated March 17, 2023.
63. Susan Levine, Great Swamp Watershed Association in a letter dated March 17, 2023.
64. Carol Anton in an email dated March 17, 2023.
65. Claire Whitcomb, Madison Environmental Commission in an email dated March 18, 2023.
66. Lee Lusardi Connor in an email dated March 19, 2023.
67. Sally O'Neill and J. Michael Neibert in an email dated March 19, 2023.
68. Patricia M. Collins in an email dated March 20, 2023.
69. Stephen Souza, Consultant, Great Swamp Watershed Association in a letter dated March 20, 2023.
70. Dawn Teresa Parkot in a letter dated March 15, 2023.
71. Dawn Teresa Parkot in a letter dated March 19, 2023.
72. Dawn Teresa Parkot in a letter dated March 20, 2023.
73. Leslie Jones-Wentz in an email dated March 21, 2023.
74. Leslie Jones-Wentz in an email dated March 23, 2023.
75. Sara Webb in an email dated March 21, 2023.
76. Susan Kessel in an email dated March 22, 2023.
77. David Robinson, Trustee, Great Swamp Watershed Association in an email dated March 22, 2023.
78. Kathleen Caccavale in an email dated March 22, 2023.
79. Phaedra Singelis in an email dated March 22, 2023.
80. John Kramer in an email dated March 22, 2023.
81. Gary Annibal in an email dated March 22, 2023.
82. Charles Wentz in an email dated March 22, 2023.
83. Lorraine Michelle Sing in an email dated March 22, 2023.
84. Nancy Lennon in an email dated March 22, 2023.
85. Deborah McDonough in an email dated March 22, 2023.
86. Joanne Marine in an email dated March 22, 2023.
87. Samuel Friedman in an email dated March 22, 2023.
88. Joan Tartaglia in an email dated March 23, 2023.
89. Jennifer Avers in an email dated March 23, 2023.
90. Susan B in an email dated March 23, 2023.
91. Elke Passarge in an email dated March 23, 2023.
92. Amanda Underkoffler in an email dated March 23, 2023.
93. Thomas Mooney in an email dated March 23, 2023.
94. Rebecca Friedman in an email dated March 23, 2023.
95. Judy Kroll in a letter dated March 23, 2023.
96. Mary Arnella-Venezia in an email dated March 23, 2023.
97. Joseph Basralian in an email dated March 23, 2023.
98. Martin Prentice in an email dated March 23, 2023.
99. Shane Vince in an email dated March 23, 2023.
100. Robert Crescas in a letter dated March 27, 2023.
101. Colette Crescas in a letter dated March 12, 2023.

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102. Robert Hyde, Board Member, Great Swamp Watershed Association in an email dated March 23, 2023.
103. Bridget Daley in an email dated March 23, 2023.
104. Judith Hazlewood in an email dated March 23, 2023.
105. Laurie Howard, Executive Director, Passaic River Coalition in an email dated March 23, 2023.
106. Lydia Chambers in an email dated March 23, 2023.
107. Kathleen Bartley, Madison Shade Tree Board and Friends of the Drew Forest in an email dated March 23, 2023.
108. Joe Grather, Esq, McKirdy, Riskin, Olson & DellaPella, P.C. in an email dated March 23, 2023.
109. Thelma K. Achenbach in an email dated March 23, 2023.
110. Georgia Van Ryzin in an email dated March 23, 2023.
111. Nancy Rago, Membership and Social Media Manager, Great Swamp Watershed Association in an email dated March 23, 2023.
112. Eileen Ferrer in an email dated March 23, 2023.
113. Donna Goggin Patel in an email dated March 23, 2023.
114. John Burgess in an email dated March 24, 2023.
115. William Van Ryzin in an email dated March 24, 2023.
116. William Van Ryzin in a second email dated March 24, 2023.
117. Barbara Burgess, Resident in an email dated March 24, 2023.
118. Meisha Williams Bertels in an email dated March 24, 2023.
119. Julie McCourt in an email dated March 24, 2023.
120. Melanie Hertgen, Great Swamp Watershed Association in an email dated March 24, 2023.
121. Jordan Glatt, Co-Chair, Great Swamp Watershed Association in an email dated March 24, 2023.
122. Lisa Stevens, Board Member, Great Swamp Watershed Association in an email dated March 24, 2023.
123. Michael Edwards, Attorney, Township of Harding in a letter dated March 24, 2023.
124. Marilyn Dee, Board Member, Great Swamp Watershed Association in an email dated March 24, 2023.
125. Jennifer Romano in an email dated March 24, 2023.
126. Valerie L. Thorpe, Director of Communications and Membership, Great Swamp Watershed Association in an email dated March 24, 2023.
127. Arthur Falgione in a letter dated March 17, 2023.
128. William Glancy in the public hearing.
129. Kathy Hourihan in the public hearing.
130. Mike Hurst in the public hearing.
131. Frances Schultz, Advisory Council Member, Great Swamp Watershed Association in the public hearing.
132. Stacey M. Valentine, Avelino Law LLP in a letter dated March 24, 2023.
133. Elliott Ruga, Policy and Communications Director, New Jersey Highlands Coalition in the public hearing.

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134. Dorothea Stillinger, Chair of the Land Preservation and Advocacy Committee, Great Swamp Watershed Association at the public hearing
135. Sandra LaVigne, Director of Water Quality Programs, Great Swamp Watershed Association in the public hearing.
136. Ginger Van Ryzin, Great Swamp Watershed Association in the public hearing.
137. Wade Kirby, Director of Development (on behalf of Sally Rubin, Executive Director), Great Swamp Watershed Association in the public hearing.
138. Michael Dee in the public hearing.
139. Russ Furnani in the public hearing.
140. Joan Tartaglia in the public hearing.
141. Hazel England, Director of Education and Stewardship, Great Swamp Watershed Association in the public hearing.
142. Thomas P. Kurlak in a letter dated March 12, 2023.
143. Elliot Ruga, Policy & Communications Director, New Jersey Highlands Coalition in an email dated November 2, 2022.
144. Julia Somers, Executive Director, New Jersey Highlands Coalition in an email dated November 4, 2022.
145. Isobel Olcott, Resident in an email dated November 6, 2022.
146. Chris Allyn, Resident in an email dated November 6, 2022.
147. Martin B. O'Connor II, Esq, O'Connor, Morss & O'Connor, P.C. in an email dated November 9, 2022.
148. Amy Hansen, Policy Manager, New Jersey Conservation Foundation in an email dated November 11, 2022.
149. Sally Rubin, Executive Director and Dorothea Stillinger, Chair of the Land Preservation and Advocacy Committee, Great Swamp Watershed Association in a letter dated January 6, 2023.

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

1. COMMENT: Commenters request an extension of the public comment period and that a public hearing be held on the amendment. (143-149)

   RESPONSE: As indicated above, the Department granted a public hearing and extension of the public comment period. A public notice was published in the New Jersey Register on February 6, 2023 at 55 N.J.R. 216(a) announcing that a public hearing would be held on March

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9, 2023 and the public comment period would be extended to 15 days after the public hearing. The public hearing notice was also posted on the WQMP Program's webpage at https://www.nj.gov/dep/wqmp/wmpnotices.html and sent out via the Department listserv. The requesters also directly received notification of the granting of the public hearing.

2. COMMENT: Withhold approval pending full understanding of the negative impacts which will be caused by this development. (18)

3. COMMENT: Consideration is needed of the environmental impact this project will have on the Great Swamp watershed. I can't believe the project was approved with a proper environmental impact study. (29)

4. COMMENT: The plan does not explain the impact it will have on the entire surrounding ecological area. (54)

5. COMMENT: These issues must be studied and carefully evaluated. The Town should have a specialist (paid for by the applicant) evaluate these issues. Water quality volume and mitigation measures look good on paper but the fact is that after construction many of these measures fail due to improper maintenance and enforcement. The Town must hire an outside environmental firm to inspect the site to evaluate the effectiveness of the erosion control and stormwater control/quality practices. These inspections should occur at least twice a year and after heavy storm events. Findings should be available online. Plans, review memos, reports and all other application information should be readily available online. I could not find much information online and travelling to Town Hall or to County and State agencies to review this important information is burdensome. (64)

6. COMMENT: The Mt. Kemble Proposed Plan warrants considerably more detailed analysis and overview before any Amendment to the Northeast Water Quality Management Plan is adjudicated by NJDEP's Bureau of Watershed Protection and Restoration. It would be a real discredit to NJDEP's implementation of climate resiliency and superior water quality management if a comprehensive review focused on watershed protection and restoration is reviewed. Considering the Amendment as proposed without strict consideration of the total environmental impact to the Conservation Management Area downstream communities will no doubt set a precedent for future developers. Thus, it is critical that NJDEP secure complete analysis of how all components of this development will impact the land, water and ecological environments. The Passaic River Coalition looks forward to much more analysis and a solid, realistic understanding of the long-term consequences of approving the Amendment as proposed by the Mt. Kemble developer. (105)

7. COMMENT: I feel the development plan of KRE does not fit the size and location of the property. BEFORE any approvals happen, please have more research and analysis done on the KRE development plan for the protection of the wetlands and water quality of the Morris Township area residents. (111)

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RESPONSE TO COMMENTS 2 THROUGH 7: The WQMP amendment is just one approval required from the Department and is not meant to address all possible issues related to the project. The above notice outlines the criteria used in the review of this WQMP amendment, which focuses on the eligibility of the property for sewer service, and the results of that review. Approval of this amendment does not eliminate the need to obtain any other necessary permits, approvals or certifications required by any Federal, State, county or municipal review agency with jurisdiction over the project. Many of the issues that are beyond the scope of the WQMP amendment review will be addressed as part of the review required to obtain these other approvals.

8. COMMENT: Commenters expressed concern that the project will reduce groundwater recharge on site and that it does not meet the requirements of N.J.A.C. 7:8, requiring 100% of a site's annual pre and post development stormwater volumes be infiltrated on site. (10, 12, 24, 36, 44, 45, 49, 63, 65, 69, 70, 75, 76, 77, 78, 95, 97, 101, 103, 106, 107, 119, 131, 138, 139)

9. COMMENT: Commenters expressed concern that a reduction in stormwater infiltration due to the impervious cover of the project will cause an increase in stormwater runoff from the site. (3, 4, 5, 12, 16, 28, 31, 32, 33, 34, 35, 36, 39, 47, 53, 58, 60, 61, 63, 64, 65, 66, 67, 69, 70, 71, 72, 75, 76, 77, 78, 79, 85, 86, 97, 101, 102, 103, 104, 106, 107, 108, 109, 111, 117, 120, 126, 131, 132, 134, 136, 137, 138, 140, 142)

10. COMMENT: Commenters expressed concern that stormwater runoff from the site will result in downstream flooding and erosion. (5, 6, 10, 12, 15, 16, 18, 21, 27, 31, 32, 33, 34, 35, 36, 39, 41, 44, 53, 58, 60, 64, 69, 70, 75, 76, 78, 85, 88, 91, 92, 97, 101, 102, 103, 105, 107, 109, 111, 112, 113, 117, 119, 122, 126, 128, 130, 136, 141, 142)

11. COMMENT: Commenters expressed concern that stormwater runoff from the site will degrade water quality downstream. (2, 3, 5, 7, 9, 10, 12, 13, 14, 15, 16, 18, 21, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 49, 53, 55, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 69, 70, 71, 72, 73, 75, 76, 77, 78, 81, 84, 85, 88, 89, 91, 95, 96, 97, 98, 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, 122, 124, 127, 128, 132, 135, 136, 137, 138, 140, 141)

12. COMMENT: Commenters expressed concern that stormwater runoff from the project will negatively impact the environmental resources downstream in the Conservation Management Area, including wetlands, vernal pools, and wildlife habitats. (2, 3, 6, 10, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, 39, 41, 45, 46, 47, 49, 50, 51 53, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 75, 76, 77, 78, 81, 84, 85, 88, 91, 95, 97, 98, 101, 102, 103, 104, 105, 106, 107, 110, 111, 112, 113, 115, 116, 118, 119, 120, 122, 125, 126, 127, 128, 129, 130, 131, 132, 134, 136, 137, 138, 141)

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RESPONSE TO COMMENTS 8 THROUGH 12: The WQMP Program does not review for compliance with the Stormwater Management rules at N.J.A.C. 7:8, and compliance with the Stormwater Management rules is not a prerequisite for SSA eligibility. The WQMP amendment required for this project is just one approval required from the Department and is not meant to address all possible issues with the project. Approval of this amendment does not eliminate the need to obtain any other necessary permits, approvals, or certifications required by any Federal, State, county, or municipal review agency with jurisdiction over the project.

13. COMMENT: Who will enforce mitigations of stormwater management from these polluting sources? (41)

RESPONSE: Harding Township is required to develop, update, implement and enforce a stormwater management program to address post construction stormwater runoff in new development and redevelopment and to ensure compliance with the Stormwater Management rule through their MS4 permit. Any violation of the permit would be handled by the Department's Water Compliance and Enforcement Program.

14. COMMENT: Commenters expressed concern that wetlands and their buffers on the project site will be negatively impacted by the project. (8, 12, 20, 22, 37, 39, 42, 57, 60, 63, 64, 69, 70, 72, 76, 93, 95, 102, 103, 107, 112, 114, 131, 139)

RESPONSE: In accordance with N.J.A.C. 7:15-4.4, wetlands as mapped pursuant to N.J.S.A. 13:9A-1 and 13:9B-25 are identified as environmentally sensitive areas that are not eligible for sewer service. The applicant provided a Letter of Interpretation (File #1413-07-0007.1/FWW160001) to confirm that no wetlands were included in the expanded SSA. Additionally, as part of the WQMP amendment, a conservation restriction has been placed on the wetland areas.

As mentioned in response to comments 2 through 7, this amendment is only one approval necessary for the project. The project must obtain all Department wetlands permits and approvals required under N.J.A.C. 7:7A before development can occur. The Department's Division of Land Resource Protection administers freshwater wetlands permits.

15. COMMENT: Commenters expressed concern that habitat for threatened and endangered species, specifically Wood Turtle, Indiana Bat, Northern Myotis, Barred Owl, and Red-Shouldered Hawk, on the project site will be lost if the property is developed. (12, 15, 22, 28, 37, 38, 39, 44, 54, 61, 63, 96, 97, 99, 103, 112, 114, 119, 127)

RESPONSE: As discussed above, a Habitat Suitability Determination (HSD) was prepared in accordance with N.J.A.C. 7:15-4.6 for the Wood Turtle and a review of the property concluded that the onsite wetlands and associated habitat were largely inaccessible to Wood Turtles

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documented along Catfish Brook on the eastern side of Route 287. There is no stream corridor access from the site to provide the necessary characteristics to support hibernating Wood Turtles. As a result, the site was considered to be unsuitable habitat for the species and impacts to Wood Turtle habitat from this project would largely be insignificant or discountable.

The onsite habitat was deemed to be suitable for the Indiana Bat and Northern Myotis. A Habitat Impact Assessment (HIA) was prepared in accordance with N.J.A.C. 7:15-4.7. Surveys of the project site found the successional forest to be of marginal habitat value, that no critical habitats for either species were present due to limited appropriate roost trees and limited foraging area, and the extent of available habitat in nearby areas compared to the loss of 9.3 acres from this project, adjacent to dense commercial development and an interstate highway, are largely discountable. Additionally, approximately 6.3 acres of the project have been placed under a conservation restriction.

With a number of commenters expressing concern for Barred Owl habitat, the Department reviewed the project site with all available data and determined that based on Landscape mapping methodology, the project site may be considered suitable habitat for the Barred Owl. Subsequently, the Department required the applicant to conduct an HSD for the Barred Owl on the project site. The HSD concluded that the onsite habitat did not provide any potential nesting opportunities and that highway noise would limit use of the site for foraging. The associated forest complex site and the surrounding landscape of residential, commercial, and major highway further degraded the quality of the habitat to the extent that use would be unlikely for any significant period of time by the Barred Owl. The Department concurs with these conclusions. Department review of aerial photography for the location shows that it wasn't until the early 2000's that the vegetation had matured sufficiently to meet the classification of forest. As a result, it is highly unlikely that the property would feature trees large enough for nesting by the Barred Owl within a forest which is approximately 25 years old. This conclusion is supported by the onsite habitat conditions observed during a December 19, 2023 site inspection by Department staff that showed few trees of sufficient size to support potential nesting to occur onsite. Much of the wetland habitat was observed to feature trees with a diameter-breast height of less than 10 inches, a somewhat dense understory, and scarce evergreen potential roost habitat. In regard to other potential uses, the upland forest community consists almost exclusively of hardwood trees which do not provide the cover and shelter evergreen trees do for roosting. The upland forest community does appear to be structurally suitable habitat for foraging currently with a closed canopy and relatively open understory, but the proximity of the site to a major interstate and associated traffic noise likely limit the frequency of foraging use of the on and offsite/adjacent forest complex. The onsite habitat would be considered marginal quality at best. The habitat impacts associated with the project will remove a relatively insignificant amount (~2.6%) of marginal quality forest habitat that would support active use by the Barred Owl within the anticipated range of the species. Various landscape factors surrounding the forest patch further reduce the potential for this loss of habitat to significantly affect the local population of Barred Owls.

In regard to concerns about the Red-Shouldered Hawk, the project site has not been identified as habitat Rank 3, 4, or 5 for Red-Shouldered Hawk under the Landscape Project Data version 3.3.

16. COMMENT: Commenters expressed concern that erosion from stormwater runoff will destroy threatened and endangered species habitat downstream, particularly the Wood Turtle and Indiana Bat. (10, 16, 21, 22, 24, 26, 27, 31, 32, 33, 34, 35, 36, 41, 45, 49, 53, 58, 59, 60, 69, 74, 76, 82, 85, 88, 89, 92, 97, 103, 106, 111, 113, 116, 117, 122, 125, 126, 127, 128, 132, 136, 137, 141)

    RESPONSE: This amendment represents only one part of the permit process and does not eliminate the need to obtain all other necessary approvals required by any Federal, State, county or municipal review. Potential downstream impacts will be addressed through review of these other approvals. As mentioned in response to Comments 8-12, the project is subject to the Stormwater Management rule implemented through Harding Township's MS4 permit and approval of a Soil Erosion and Sediment Control Plan by the Morris County Soil Conservation District.

17. COMMENT: Commenters expressed concern that the vernal pools within the downstream Conservation Management Area (CMA) would be damaged or destroyed by the increase in stormwater runoff from the development. A federally funded restoration project was completed in 2020 to enhance the vernal pools in the Conservation Management Area. (3, 10, 16, 38, 39, 41, 53, 59, 60, 88, 101, 106, 110, 116, 122, 126, 132, 137, 141)

    RESPONSE: Vernal pools and vernal habitat are not located on the project site and the project will need to meet the Stormwater Management rules, which are intended to minimize adverse downstream impacts resulting from stormwater.

18. COMMENT: Wildlife will die. (7)

19. COMMENT: I'm incredibly concerned about the impact this will have on our beautiful green space, animal life and wetlands. (8)

20. COMMENT: The ecosystem here is well established and works as nature intends. Owing only to the desire of a commercial developer, this virgin area will largely be erased along with the resident wildlife. (18)

21. COMMENT: In regard to the Great Brook HUC14, which is also listed as impaired on the 303d list for aquatic life, the proposed development of 96 condo units, would also cause further water quality degradation. Great Swamp Watershed Association (GSWA) has conducted macroinvertebrate studies in the Silver Brook (aka Catfish Brook) which runs through GSWA's Conservation Management Area directly downstream from the proposed development for many years. One of the goals of our recent restoration to this stream and

the surrounding floodplain forest area was to improve habitat for stream biota. The changes to hydrology which would result from the development would cause an estimated increase of ten to twenty percent in total suspended solids directly impacting critical macroinvertebrate habitat. (23)

22. COMMENT: The increased water volume during storm events will cause flooding and scouring of the banks of the Silver Brook (macroinvertebrate and wood turtle habitat). (36)

23. COMMENT: The project will pave over this large area, losing wildlife, wildlife habitat, and an important green area that absorbs heat and stormwater runoff. The volume of stormwater runoff, and the nutrient content of the runoff, will negatively impact sensitive downstream habitats.

    Macroinvertebrates are extremely important. We cannot lose habitat for flying insects, which are critical in pollinating flowers and our food sources. (38)

24. COMMENT: The development of the Mt. Kemble Ave condo project will cause harm to wildlife. Additional water flow will surely ill affect the stream banks and wildlife nesting areas. Removal of the trees and increased light pollution from the condos will further stress the Federally endangered Indiana bat and the other bats. (39)

25. COMMENT: Once development is implemented, there will be less base flow to support biota downstream. (41)

26. COMMENT: We have so little protected areas left in NJ, let's keep what little areas that have not been developed wild - especially those buffer zones around protected and sensitive habitat and crucial way stations for migrating birds and other wetland wildlife. (79)

27. COMMENT: This project destroys wetlands and endangers the wildlife that it sustains. (93)

28. COMMENT: The negative impacts would extend far beyond the project area itself, threatening wetlands, streams, flood plains, not to mention the wildlife that depend on this natural area. (95)

29. COMMENT: The development may endanger natural habitat of existing fauna, such as the wood turtles (adult turtles are repeatedly found on the property), along with nesting Barred Owl and Red Shouldered Hawk. (96)

30. COMMENT: The implications this development would have even further downstream are obvious. The area is already increasingly stressed by stormwater flows, pollution, nutrient loads, and biodiversity in the Upper Passaic watershed is waning. (97)

31. COMMENT: The impact of this development will destroy so much of the Silver Brook wildlife and overall health in and around it. (99)

32. COMMENT: The development will negatively affect the sensitive macroinvertebrate habitat and therefore, the sensitive species who live in the habitat. (101)

33. COMMENT: Moving forward as proposed with the project and the accompanying increase in the Woodland WWTP service map would result in significant environmental harm and damage to the surrounding areas and wildlife and to downstream tributaries and other bodies of water including wetlands. (102)

34. COMMENT: The proposed development would threaten much of the Great Swamp watershed and related habitat and wildlife. (107)

35. COMMENT: This project will directly negatively impact the aquatic and terrestrial flora and fauna downstream critical to the local habitat. (110, 116)

36. COMMENT: The increased runoff flow travels under I-287 and directly into the GSWA's CMA. Our 73-acres of wetlands and vernal pools are breeding places for our amphibians and macroinvertebrates residents. The Sliver Brook runs through our protected CMA area, so the degradation of water quality is also a major concern. (111)

37. COMMENT: The development will change the runoff water flow so that less runoff goes into the endangered wetlands or it goes all at once or not at all. So the high flow times will be bigger, but the lower flow times will be not at all, and this will put more stress on the endangered bat and turtle populations in the neighboring wetland area, as well as interfering with many species of frogs and insects that are not currently endangered.

    I used to have bats living under my facia boards but I haven't seen them in a couple years, so, in my estimation, they are more endangered than they were before. Bats are essential for removing a lot of the flying pests like mosquitos that are in the area. Making it harder for the bats is bad for the overall balance of the environment in this area.

    As for the endangered wood turtle, the Jockey Hollow National Historic Park already understands the need to protect them because after they lost a footbridge over the headwaters of the Passaic River near the Cross Estate, there are signs up now near the trail crossing that warn hikers not to wade or cross it because they might be interfering with the habitat of the Wood Turtle. If a restriction on behavior is good enough for the National Park Service, it really should be good enough for the NJDEP. (114)

38. COMMENT: Alteration of the rates of flow and volume of storm water into a sensitive area will most certainly have a negative effect on many forms of local wildlife; transportation of damaging surface chemicals into waters where many venerable forms of wildlife are already struggling to survive; and threatens the survival of wildlife that depends on the vulnerable wildlife that depends on the clean water. (115)

39. COMMENT: The increase of any chemicals and nutrients in the streams and rivers will endanger any species living in it, including macroinvertebrates. (120)

40. COMMENT: Stormwater runoff will contain increased nutrients and chemicals that will have a negative impact on downstream water quality. The overall runoff volume will be increased impacting sensitive downstream habitats. (122)

41. COMMENT: Vernal pools are seasonal pools of water that provide habitat for distinctive plants and animals. These will be destroyed by increased stormwater runoff created by this proposed plan that replaces 9.3 acres of woodland area with impervious surfaces, along with the entire ecosystem that thrives in these essential wetlands. (126)

42. COMMENT: The potential degradation of the water quality and possible erosion could have and probably would have an adverse impact on the wildlife such as the wood turtle, which is an endangered species. (128)

RESPONSE TO COMMENTS 18 THROUGH 42: The Department acknowledges the commenters concerns; however, this amendment represents only one part of the permit process and does not eliminate the need to obtain all other necessary approvals required by any Federal, State, county or municipal review. As mentioned above, the project is still subject to the Stormwater Management rule implemented through Harding Township's MS4 permit and approval of a Soil Erosion and Sediment Control Plan by the Morris County Soil Conservation District. Many of the concerns will be addressed as part of those approvals. The WQMP application was reviewed for compliance with N.J.A.C. 7:15. The criteria for SSA eligibility is outlined at N.J.A.C. 7:15-4.4. As discussed above, the project was reviewed regarding threatened and endangered wildlife species habitat Ranks 3, 4, and 5 under the Landscape Project Data and Natural Heritage Priority Site listings. For the Department's review of Rank 3, 4, and 5 endangered and threatened species habitat, see the response to comments 15 and 16.

43. COMMENT: The site cannot be selected due to the N.J.A.C. 7:15 Purpose, Scope, and Intention. (12)

44. COMMENT: The impacts of this project are inconsistent with the stated Planning Goals of N.J.A.C. 7:15, the Water Quality Management Planning rule. (69)

RESPONSE TO COMMENTS 43 AND 44: In accordance with the stated goals of the WQMP rule at N.J.A.C. 7:15-1.2(a) to conserve the natural resources of the State and promote environmental protection, the application was reviewed against the criteria for sewer service eligibility at N.J.A.C. 7:15-4.4 and was found to meet those criteria, ensuring that the project is consistent with this chapter and the WQM Plan. Issues identified in the review that were addressed included wetlands and threatened and endangered species habitat. Environmentally sensitive areas on the project site have been preserved with a conservation

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restriction on the property. See the response to comment 14 for the wetlands review and the response to comments 15 and 16 for the threatened and endangered species habitat review.

45. COMMENT: The consistency determination issued by the Highlands Council is neither consistent with the policies of the Highlands Plan, nor responsive to Executive Order #114. The Highlands Council Consistency Determination for this WQMP amendment is a rubber stamp of approval for a proposed project located in a watershed with the highest level of water deficit, (1, 133)

46. COMMENT: This proposed extension of sewer service area should be denied until it can be approved in a manner consistent with the RMP and Executive Order 114. We agree with the NJ Highlands Coalition that the Highlands Council should revoke its previous consistency determination for this proposal. (2)

47. COMMENT: Executive Order #114 states that the DEP shall take appropriate action to ensure that no approval is given to any portion of a Water Quality Management Plan amendment in the Protection Zone, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of net water availability, unless the approval is conditioned on a Municipal WUCMP, consistent with the policies in the Highlands Plan, having been approved by the Highlands Council and having been fully implemented. The proposed development plan will further exacerbate the net water deficit of ~ -0.942 million gallons a day. (23)

48. COMMENT: Water for the development will be drawn from a Southeast Morris County Municipal Utilities Authority well that is in a watershed already in deficit, while the wastewater will be released into a different sub-watershed. Executive Order #114; Page 5, directs the DEP to ensure that no water allocation permit be issued for any development within an HUC14 subwatershed with a deficit of net water availability - which this is. The Highlands Council has not approved the changes anticipated from this development, and approval is required before the development is approved. (36)

49. COMMENT: Executive Order #114 signed by then Governor Jon Corzine states in Section 10 that "The DEP shall take appropriate action to ensure that no approval is given to any portion of a Water Quality Management Plan amendment in the Protection Zone, the Conservation Zone or the Environmentally-Constrained Sub Zones, as delineated in the Highlands Plan, within HUC14 subwatershed that is in or anticipated to be in, a deficit of net water availability, as identified by the Highlands Plan, unless the approval is conditioned on a Municipal WUCMP, consistent with the policies in the Highlands plan, having been approved by the Highlands Council and having been fully implemented." (37)

50. COMMENT: Issues of concern related to the Highlands in reference to Executive Order 114:
    -Proposed Mt Kemble development would be located in a water deficit area as delineated in the Highlands Regional Master Plan

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-Water supplied to the proposed development would be withdrawn from a sub watershed (HUC14 - Great Brook above Green Village Rd) categorized as being in water availability deficit
-Water utilized in the proposed development will be transferred out of the sub watershed (HUC14 - Great Brook above Green Village Rd) to a different sub watershed (49)

51. COMMENT: EO 114 specifically states that NJDEP shall not issue a water allocation permit for any project that results in a deficit of net water availability without the approval of the Highlands Council. Additionally, EO 114 states NJDEP shall not approve a WQMP amendment that results in, or is anticipated to result in, a net decrease in water availability. (69)

52. COMMENT: The proposed project will move water from one HUC 14 watershed to another in contrast to DEP stated policies (see Executive Order 114). (81)

53. COMMENT: The proposed housing project is within a HUC14 watershed already in deficit of just under 1 million gallons net availability per day (-0.94 mgd), and therefore does not meet the requirements for a water allocation permit as stated in Executive Order #114. Potable water supplied by SMCMUA well(s) are in the same watershed as the project site, the increased wastewater from the proposed 96 condos would go to the Woodland Treatment Plant, and then discharged to a different watershed, exacerbating the deficit.

Prior to an approval of a Water Quality Management Amendment, as outlined in the EO 114, a Municipal WUCMP must be approved by the Highlands Council and fully implemented. To date, has any such plan been fully implemented? (88)

54. COMMENT: The DEP shall take appropriate action to ensure that no approval is given to any portion of a Water Quality Management Plan amendment in the Protection Zone, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of new water availability, unless the approval is conditioned on a Municipal WUCMP , consistent with the policies in the Highlands Plan, having been approved by the Highlands Council and having been fully implemented.

KRE Harding's proposed sewer service area is in the Highlands Council's Protection Zone and within a HUC14 that the Highlands Council identified as having a deficit of Net Water Availability of 0.941722 million gallons per day. (132)

RESPONSE TO COMMENTS 45 THROUGH 54: Executive Order 114 (2008) states that "The DEP shall take appropriate action to ensure that no approval is given to any portion of a Water Quality Management Plan amendment in the Protection Zone, the Conservation Zone, or the Environmentally-Constrained Sun-Zones, as delineated in the Highlands Plan, within a HUC14 subwatershed that is in, or anticipated to be in, a deficit of net water availability, as identified

by the Highlands Plan, unless the approval is conditioned on a Municipal [WUCMP], consistent with the policies in the Highlands Plan, having been approved by the Highlands Council and having been fully implemented." In a letter dated March 21, 2022, the Highlands Council confirmed that Harding Township was working on developing a municipal-wide WUCMP. The Highlands Council has confirmed that the WUCMP is consistent with the Highlands RMP, satisfying the requirements of Executive Order 114 for the WQMP amendment. Any changes needed to Harding Township's Water Allocation Permit will be handled by the Department's Division of Water Supply and Geoscience.

55. COMMENT: The project site is located in a HUC14 subwatershed that has a net water availability deficit. The project is proposing to send wastewater to be discharged in a different HUC14, thereby exacerbating the deficit in this HUC14. (1, 2, 3, 12, 14, 15, 16, 17, 19, 23, 27, 36, 41, 45, 49, 53, 59, 63, 65, 66, 69, 73, 74, 76, 78, 81, 82, 88, 93, 101, 105, 109, 113, 115, 116, 118, 119, 121, 124, 132, 133, 137)

56. COMMENT: The Highlands Council recognizes that since the water supply wells are located in the same HUC 14 as the proposed sewer service area, but that the wastewater is conveyed to a different subwatershed that the water use is 100 percent depleted. Yet according to Regional Master Plan objective 2B8C, resource transfers between Highlands subwatersheds are allowed only when there is no other viable alternative and where such transfers would demonstrably not result in impairment of resources in either subwatershed. Potential effects on upstream or downstream subwatersheds should be included in any such evaluation. No such analysis has been provided.

    Protecting the Highlands Water supply is a paramount responsibility of not only the Highlands Council, but of DEP. Both agencies have clearly dropped the ball here, to the point that Highlands Council Consistency Determinations for proposed WQMP amendments have become rubber stamps for developments, including those, such as KRE, which is located in a subwatershed with the highest levels of water deficit. (1, 133)

57. COMMENT: The proposed project will move water from one HUC 14 watershed to another in contrast to DEP stated policies (see Executive Order 114). This is particularly important because much of Harding Township residents are served by individual private wells and many of them were installed prior to current DEP regulations concerning the construction of wells. As a result, they may not have the casing length or total depth required to provide adequate water supplies if the water table is diminished by the transfer of water out of the watershed. (81)

RESPONSE TO COMMENTS 55 THROUGH 57: Water supply availability is not an issue addressed in the current WQMP rule. Any necessary changes to Harding Township's Water Allocation Permit as a result of this project will be addressed by the Department's Bureau of Water Allocation & Well Permitting.

As mentioned in response to Comments 45-54, for areas in the Highlands region designated as Protection Zone, Conservation Zone, or the Environmentally-Constrained Sub-Zones, Executive Order 114 (2008) does require a WUCMP consistent with the policies of the Highlands RMP, before approval is given to a WQMP amendment. The Highlands Council has confirmed that the WUCMP is consistent with the Highlands RMP.

58. COMMENT: Commenters expressed concerns that the proposed amendment is not consistent with the Highlands Regional Master Plan. The Highlands Council's consistency determination should be revoked and the project should be denied or modified to conform to the Highlands Regional Master Plan. (1, 2, 9, 12, 69, 133, 139)

RESPONSE: Although Harding Township has elected not to conform with the Highlands RMP, in accordance with N.J.A.C. 7:15-2.9, N.J.A.C. 7:15-3.5, N.J.A.C. 7:38-1.1(k)), Highlands RMP policies, and Executive Order (EO) 114 (2008), the Highlands Council reviewed the amendment for consistency with the Net Water Availability (NWA) provisions of the RMP. As discussed above, in a letter dated March 21, 2022, and reaffirmed in a November 1, 2022 email, the Highlands Council found the project consistent with the Net Water Availability provisions of the RMP.

59. COMMENT: The RMP states in Chapter 5, "Implementation of water use efficiency" that "a firm, or bonded commitment for implementation of the selected methods (components of the WUCMP) shall be required prior to approval of additional consumptive or depletive uses where a current deficit exists." No such guaranty is placed as a condition of the Highlands Council's approval. In fact, no schedule for compliance, or manner to ensure compliance is set forth. Only vaguely outlined conservation measures are stipulated, with no set dates for implementation, or that the applicant is even required to follow up with the Highlands Council. Nor is there any penalty or non-compliance stipulated. (1)

60. COMMENT: The applicants proposed water use mitigation plans of utilizing low flow fixtures and appliances anticipate a savings of 2951 gallons per day. Morris Township already requires low flow appliances. The applicants also outline storm water and outdoor conservation measures. How and by whom will these mitigation measures be monitored and enforced? (88)

61. COMMENT: I have read about the Mitigation Plan submitted by the applicant, with specific interest in regard to the Indoor Conservation Measures, where the applicant commits to the installation of high efficiency plumbing fixtures and appliances for the development, which would result in a water savings of 3,000 gallons per day of water. Even if installed, how is it possible to enforce these measures, given they would be inside people's homes? (109)

RESPONSE TO COMMENTS 59 THROUGH 61: As part of the Highlands Council's review of the proposal, in accordance with Executive Order 114, a mitigation target of 34,293 gallons per day was established. As a condition of the Highlands Council's approval of the project, the

applicant was required to develop a site-specific Water Deficit Mitigation Plan and Harding Township was required to develop a municipal WUCMP. Water use mitigation measures are incorporated into Harding Township's WUCMP as approved by the Highlands Council. Harding Township will be responsible for the enforcement of these measures.

62. COMMENT: The additional wastewater sent to the Woodland STP would add additional pollutants to the discharged effluent and negatively impact the water quality in the receiving waterbody, Loantaka Brook, and downstream waterbodies like Kitchell Pond. Loantaka Brook is already an impaired waterway and this will only make it worse. (3, 14, 16, 19, 20, 23, 24, 27, 28, 31, 32, 33, 34, 35, 36, 39, 40, 41, 45, 49, 59, 60, 61, 63, 65, 66, 67, 69, 70, 71, 72, 73, 84, 85, 87, 88, 94, 100, 102, 108, 117, 124, 127, 132, 133, 135, 136, 137)

63. COMMENT: The proposed changes to the Northeast Water Quality Management Plan to expand the Sewer Service Map for the Woodland Sewage Treatment Plant (WSTP) in Morris County, represent a significant environmental threat to the water quality in two separate HUC14 watersheds - Great Brook Above Green Village (NJ02030103010030) and Loantaka Brook (NJ02030103010040). The main streams in both of the watersheds are listed as impaired by NJDEP and are included in the most recent 303d list. (23, 131)

64. COMMENT: A study conducted by Princeton Hydro determined that in Loantaka Brook the Woodland Treatment Plant effluent was a primary, point source of nutrient pollution to the stream. Nutrient load, nitrogen and phosphorus, is one of the currently identified issues in this stream system. Water quality data collected by GSWA since 2012, continually shows total phosphorus and total nitrogen levels in exceedance of the NJDEP and EPA surface water standards. Specifically, our data from our quarterly sampling site located directly downstream from the Kitchell Pond impoundment, which is only approximately 3,000 feet below the Woodland STP, showed that total nitrogen exceeded the EPA standard on every sampling date and total phosphorus exceeded NJDEP surface water standards on all but one date. (23)

65. COMMENT: The added phosphorus loading will exacerbate the existing water quality impairments documented by the GSWA's sampling program. The additional phosphorus loading will impact the ability to remove Loantaka Brook from the State's 303d list. This has not been addressed by the applicant. The applicant has not demonstrated how the proposed increase in phosphorus loading is consistent with the Non-Tidal Passaic River TMDL. (69)

66. COMMENT: Both Great Brook watershed, where the development will be located, and Loantaka Brook watershed are classified by DEP as Category 2 impaired waters. Anti-degradation policies state that there can be no measurable lowering of water quality from a proposed project. (3)

67. COMMENT: Loantaka Brook brings great value to the surrounding community and lowering the water quality in Loantaka Brook is a major risk. The Antidegradation policy 7:9B-1.5d

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states that there can be no measurable change or lowering of water quality in Loantaka Brook, and that the developer should perform an Antidegradation Analysis if there is a possibility of a change and justify a need for lowering the water quality." (14)

68. COMMENT: Both Great Brook and Loantaka Brook are classified by the DEP as Category 2 impaired waters. Anti-degradation policies state that there can be no measurable lowering of water quality from a proposed project. Increased volume of nutrients from this development will negatively impact water quality downstream of the Sewer Treatment Plant. (31, 32, 33, 34, 35, 132)

69. COMMENT: The development would degrade an already impaired stream in violation of NJDEP water quality and anti-degradation policies 7:9-1.5d. (59, 136)

70. COMMENT: Lowering the water quality, or even the possibility that this could happen, requires the developer to perform an Antidegradation Analysis as per 7:9B-1.5d. (85)

71. COMMENT: NJDEP's Antidegradation policy 7:9B - 1.5d states that there can be no measurable change or lowering of water quality in affected waterways (in this case Loantaka Brook), so I ask that the developer be required to perform an Antidegradation Analysis to determine if there is a possibility of a change in the Brook's water quality. If such a change is predicted, the developer should also be required to justify a need for lowering said water quality (and possibly causing health problems in people who enjoy recreation activities in the Loantaka Brook Reservation). (87, 94)

72. COMMENT: Adding the proposed area to the Woodland Wastewater Treatment Plant sewer service map will only further degrade the Loantaka's HUC 14 in direct contradiction to New Jersey DEP's surface water quality standards 7:9B, 1.5 section A, as set out in the Statement of Policy and the Anti-Degradation Policy 7:9B, 1.5 section D. (131)

73. COMMENT: Commenters expressed concern that the project would increase the discharge of the Woodland STP, leading to additional nutrient volume in the Loantaka Brook and Kitchell Pond downstream of the discharge area. The additional nutrient volume would increase Harmful Algal Blooms in these water bodies. (3, 23, 24, 27, 28, 41, 49, 59, 69, 84, 85, 87, 94, 113, 117, 124, 132, 135, 137)

74. COMMENT: I have heard that the sewer facility is already over capacity. How will that be addressed? (39)

75. COMMENT: Additional development will adversely impact the existing sewer capacity. (108)

RESPONSE TO COMMENTS 62 THROUGH 75: The applicant included a wastewater treatment capacity analysis in accordance with N.J.A.C. 7:15-3.5(j)2. The analysis found that the Woodland STP had sufficient capacity for the project. Discharge limits established in the

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Woodland STP's NJPDES permit are designed to avoid degradation of water quality into the receiving waterbody, Loantaka Brook. Any violations of the established discharge limits are handled by the Department's Water Compliance and Enforcement Program.

76. COMMENT: I support affordable housing; however, this is also an Environmental Justice issue since the site is inaccessible by public transit and can only be managed with car ownership, thus making it unavailable to a significant portion of citizens who qualify for affordable housing. This is inherently discriminatory and while possibly meeting the letter of the affordable housing law, does not conform to the spirit of it. (27)

77. COMMENT: The KRE development is a glaring example of using the COAH requirement to take advantage of a disadvantaged population by placing housing for low-income individuals next to a highway (with no planned sound/air remediation), and accessible to community services only by car and only through an industrial park. "They're poor... give them the crappiest housing possible." (29)

78. COMMENT: The site is only accessible through an office park, which is ridiculous. (42)

79. COMMENT: The proposed project has no ingress/egress in the municipality of Harding, in which jurisdiction it was filed. The proposed site is landlocked within Morris Township. This proposed development would then impose access via an office complex driveway located in the adjacent municipality of Morris Township. (44)

80. COMMENT: The planning board of Morris County pointed out, "Locating a completely auto-centric development next to an interstate highway with no sound attenuation measures raises some environmental justice concerns, especially when it appears the majority of the low- and moderate-income units will be located closest to the highway." (45)

81. COMMENT: The proposed development is situated and designed in a way whereby it will subject its occupants to be both isolated from other residential areas and subject to a lower quality of life. The development is located behind an existing commercial office complex and bordered by I-287. As such it will be subject to environmental impacts including noise and air emissions from vehicular traffic. Since it is understood that a portion of this development is reserved for affordable housing units, I see this action as perpetuating environmental justice issues. (49)

82. COMMENT: The property is landlocked with no access or egress in Harding. They tried to use access in a Morris Township housing development. Now they are using access via a corporate park. (68)

83. COMMENT: Harding Township funnels all of the project transportation through an office complex in Morris Township. This allows them to shift the burden of their obligation to other taxing authorities. While the residents are living 100 feet from I-287, it is not accessible. In order to find public transportation on US Route 202 it will be a walk of 0.6 to

1.2 miles through the office parking area. The new residents will be shoehorned between a large 7-building office complex, and I-287. There is no soundwall here, and if one is built, it will not silence the immense amount of truck traffic. There is no public transportation. There are no sidewalks on US Route 202. No shopping or public facilities are within walking distance. This violates every aspect of HUD's "Connected Communities" goals for housing and transportation. In other words: This project makes a parody of the Affordable Housing Act as if to show its residents and the community that the program itself is at fault. (93)

RESPONSE TO COMMENTS 76 THROUGH 83: The Department acknowledges the commenters concerns regarding environmental justice; however, the impacts of traffic and accessibility to public transportation are beyond the scope of the WQMP Program. The proposed sewer service was reviewed in accordance with the sewer service eligibility criteria in N.J.A.C. 7:15.

84. COMMENT: Commenters believe that the project should be infill or relocated to an area already disturbed by human activity and in need of redevelopment, not an undisturbed area. (3, 6, 12, 15, 17, 31, 32, 33, 34, 35, 38, 49, 53, 76, 90, 95, 100, 115, 131, 132, 137)

85. COMMENT: Commenters believe that the project should not be located in such an environmentally sensitive area. (22, 54, 72, 75, 76, 83, 91, 97, 103, 107, 111 114, 116, 117, 118)

RESPONSE TO COMMENTS 84 AND 85: The WQMP Program does not decide where projects should occur or the nature of the projects. The role of the WQMP Program is to review applications submitted to the Program against the criteria established in N.J.A.C. 7:15. Local government, through master planning and zoning ordinances, determines the type of development the municipality desires in an area.

The WQMP rule does not generally prohibit areas not considered infill from being included in the SSA. The only instance where it may be necessary for the project to be considered infill development is in a Coastal Fringe Planning Area, Coastal Rural Planning Area, or Coastal Environmentally Sensitive Planning Area identified on the CAFRA Planning Map in accordance with N.J.A.C. 7:15-4.4(f). Since the project site is not within the CAFRA zone, infill does not factor into the eligibility for sewer service.

The WQMP rule at N.J.A.C. 7:15-4.4 establishes the criteria which must be met for an area to be eligible for delineation as SSA. The criteria are found at N.J.A.C 7:15-4.4(d) and at N.J.A.C 7:15-4.4(e) areas considered environmentally sensitive are identified. The WQMP Program reviewed the wetlands and endangered and threatened species habitat identified on the project site and determined that, as proposed and with placement of the conservation restriction, the project would have a de minimis impact on those environmentally sensitive features. For the wetlands review, please see response to comment 14. For the endangered and threatened species habitat review, please see response to comments 15 and 16.

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86. COMMENT: The addition of this 9.3 acre parcel to the Woodland sewer service area represents an expansion of the sewer service area into a previously excluded area. (3, 17, 19, 26, 31, 32, 33, 34, 35, 49, 59, 63, 66, 74, 82, 120, 132, 133, 137)

RESPONSE: The purpose of the WQMP amendment application was to expand the sewer service area of the Woodland STP to include the project site. The application was reviewed against the criteria for the delineation of sewer service areas at N.J.A.C. 7:15-4.4, which the application was able to meet. Therefore, the Department has no reason to deny the application. As stated previously, the WQMP amendment is 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 any other necessary permits, approvals or certifications required by any Federal, State, county or municipal review agency with jurisdiction over the project.

87. COMMENT: The RMP Project Review standards for WQMP reviews require that the applicant consider reducing the size of the sewer service area that is creating the excess demand in a deficit HUC14. (1)

88. COMMENT: Please do not approve the Amendment. It will give us a chance to scale down the project to a reasonable size and in so doing, protect the Great Swamp and other local waterways. (50)

89. COMMENT: The proposed project will impact the surrounding community, this is a tightly compressed space - how can you fit that big of a development! Please find a better location or alternate plan of smaller environmental footprint. (54)

90. COMMENT: The proposed development is just way too big for the resources on the site. It needs to be reduced in scope. (57, 134)

91. COMMENT: Please consider requiring a far less aggressive development of this sensitive and acutely environmentally necessary parcel. (71)

92. COMMENT: High density housing is a poor fit for this particular property. (72)

93. COMMENT: The proposed project is far too large and negatively impactful for this site. (88)

94. COMMENT: The development plan of KRE does not fit the size and location of the property. (111)

95. COMMENT: The development is extremely overloaded in terms of my professional opinion. (130)

RESPONSE TO COMMENTS 87 THROUGH 95: As mentioned in the response to Comments 84 and 85, the WQMP Program does not determine where these projects should occur or the

nature of these projects. The role of the WQMP Program is to review applications submitted to the Program against the criteria established in N.J.A.C. 7:15. Local government, through master planning and zoning ordinances, determines the type of development and the density level the municipality desires for an area.

96. COMMENT: No sewer service: The sponsoring municipality, Harding, is unable to provide sewer service and is shunting that responsibility to the adjacent municipality of Morris Township. Why should another municipality shoulder that burden for an inappropriate development proposal? What impact does that have for current or future development within Morris Township. What impact does that have on the future capacity/upgrade and costs of sewer treatment facilities that are then passed on to Morris Township residents? How is this even remotely fair? (44)

97. COMMENT: The plan does not explain how basic services like sewer and water will be provided to the development. (54)

98. COMMENT: The development will be relying on Morris Township to hook up to their sewers. (68)

RESPONSE TO COMMENTS 96 THROUGH 98: As identified in the proposal notice, the wastewater generated by the project is proposed to be sent to the Woodland STP (NJ0024929) in Morris Township. Morris Township, as owner of the Woodland STP, passed Resolution No. 234-22, consenting to the amendment as proposed. Water service does not need to be identified as part of a WQMP amendment; however, the Highlands Council's Statement of Consent did identify that water for the project would be supplied by the Southeast Morris County Municipal Utility Authority (PWSID NJ1424001). Availability of sewer and water are aspects that need to be addressed during the local approval process for proposed development.

99. COMMENT: The proposal includes a dog park, and increased dog waste is the last ingredient any water protections or natural area deserves. Patrick Murphy, a plant ecologist, points out that dog poop adds significant nitrogen to the soil, which encourages the growth of non-native plants at the expense of native plants. Also, dogs can apparently transmit a number of pathogens to wildlife. Many of these pathogens are transmitted through the feces. Residents may expand the pet park into the wildlife refuge ignoring leash laws and proper disposal of pet waste. (12)

100. COMMENT: Housing so close to the swamp can lead to potential unwanted encounters with wildlife within the condominium's land and potentially going into the swamp. Wild animals becoming habituated with humans close by, while seeming innocuous, is not without its fair share of dangers to animals and humans alike. Species such as the red fox, common raccoon, and white-tailed deer can become problems in regard to habituation due to their size. Raccoons and foxes in particular can become not just bothersome but dangerous, as

both species are rabies vectors. Birds as well can be negatively affected by human development, especially considering the current avian flu epidemic and how vulnerable wild birds are to the disease. (60)

RESPONSE TO COMMENTS 99 AND 100: The Department acknowledges the commenters concern; however, they are beyond the scope of the WQMP rule. Enforcement of leash laws and proper disposal of pet waste is regulated at the local level by the municipality and/or condominium homeowners association (HOA). Similarly, education of residents to the proper behaviors and possible dangers of wildlife encounters is not the role of the WQMP program.

101. COMMENT: Climate change is increasing rainfall from storms, which will make the stormwater runoff from the project site even worse. (13, 44, 55, 75, 77, 78, 79, 105, 106, 107, 118)

102. COMMENT: The project will make climate change worse by hindering carbon sequestration and increasing the amount of asphalt. (38, 39, 40, 45, 65, 115)

RESPONSE TO COMMENTS 101 AND 102: The Department acknowledges the commenters' concerns regarding climate change; however, these concerns are outside the scope of the WQMP program's review. As stated previously, the WQMP amendment is 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 any other necessary permits, approvals or certifications required by any Federal, State, county or municipal review agency with jurisdiction over the project.

103. COMMENT: A preferred outcome would be to establish a protected Green Acres space through a Conservation Sale, or similar. (101)

RESPONSE: The Department's Green Acres program partners with a wide range of private and public organizations to preserve open space and protect environmentally sensitive open space, water resources and other significant natural and historical open space throughout New Jersey. Eligible entities must apply to the Green Acres program for consideration. The WQMP Program is not involved with securing Green Acres funding for land preservation.

104. COMMENT: The Jockey Hollow Hilltop Preserve was established in 2000 after it was determined that its development would adversely affect the downstream water bodies, which are the same as those the proposed development will affect. Why would approval of a development even closer to the Great Swamp and bodies of water of concern be considered? (39)

RESPONSE: The Department encourages the preservation of natural resources and protection of ESAs. Interested parties can pursue such preservation through negotiations with the landowners and with assistance from various private and public entitles. However, the WQMP Program is not involved with securing funding for land preservation. The application

was reviewed against the criteria for sewer service eligibility at N.J.A.C. 7:15-4.4 and was found to meet those criteria.

105. COMMENT: Groundwater will become contaminated. (7)

106. COMMENT: The development of the Mt. Kemble Ave condo project will adversely affect the freshwater quality of water below ground. (39)

RESPONSE TO COMMENTS 105 AND 106: The development proposes to discharge the wastewater generated to surface water via the Woodland STP, not to groundwater.

107. COMMENT: The Department has a responsibility to protect the environment and deny projects like this one that would negatively impact the environment. Approval of this project would go against the Department's purpose. (1, 2, 9, 11, 16, 23, 37, 41, 44, 47, 50, 57, 115, 116, 119, 131, 141)

RESPONSE: The Department works to protect environmental quality and public health, aiming to strike the best balance in its decisions using the best available science while operating within the authority granted by the applicable rules and statutes. The Department accomplishes this through the review processes for WQMP amendments, permits, and other Department approvals that are required before a project can be developed. This project was reviewed in accordance with the WQMP rule at N.J.A.C. 7:15 and was found to meet the criteria for designation as SSA, as outlined in this notice. Before moving forward, the project must obtain any other required Department approvals. Those approvals will look at additional factors that are beyond the scope of the WQMP rule.

108. COMMENT: The Great Swamp Watershed Association (GSWA) and the National Wildlife Refuge border this site on the other side of I-287 and connect to it via underground water courses. How is it that GSWA was not informed of this plan nor invited to "weigh in" on it, given its longstanding environmental expertise and record of stewardship? The developer evidently kept this from GSWA and, once the proposal belatedly became known to the GSWA, the applicant's attorney called for the removal of any member of Morris Township's zoning board who had any connection whatever with the GSWA. As a result, two members were disqualified to participate further. (44)

109. COMMENT: No notification was provided to the Great Swamp Watershed Association about the proposed amendment (although legally outside the 200-foot notice - absolutely immoral). (68)

110. COMMENT: During public meetings, residents were assured that environmental factors had been considered, and that water and wildlife would be protected. However, we were never given confirmation that an actual environmental study had taken place. I am so disappointed that we have been misled by both the developer and some government reps at Harding and Morris Township for all of these years. (89)

RESPONSE TO COMMENTS 108 THROUGH 110: The procedures for WQMP amendments at N.J.A.C. 7:15-3.5 require applicants to notify all governmental entities that have regulatory or planning jurisdiction over wastewater, water supply, or land use in any SSA to be modified prior to submission of their application. Additionally, written statements of consent must be requested from the abovementioned entities that may be affected by, or otherwise have a substantial interest in, approval of the proposed amendment after the amendment is publicly noticed. The applicant properly addressed these requirements. The WQMP Rule at N.J.A.C. 7:15-3.5(f)3 requires applicants to notify entities that will experience a change in their wastewater service area designation. The Great Swamp Watershed Association is not experiencing a change in their wastewater service area designation, so was not required to be specifically notified under this section; however the Department notes that preliminary notice of the proposed amendment was published in the New Jersey Register on November 7, 2022, at 54 N.J.R. 2106(a) and a public hearing was held by the Department on March 9, 2023. The removal of members of Morris Township's zoning board is not an issue the Department has any role in overseeing.

111. COMMENT: If this proposal were to proceed, it will set a terrible and frightening precedent, sacrificing hard won, critical environmental protections at a time when they are needed more than ever to stave off climate change disasters. (44)

112. COMMENT: Permitting such a development in such a sensitive place, degrading and destroying both water and habitat going forward for likely many years sets a precedent that can only lead to more such development. (59)

113. COMMENT: Considering the Amendment as proposed without strict consideration of the total environmental impact to the Conservation Management Area downstream communities will no doubt set a precedent for future developers. (105)

RESPONSE TO COMMENT 111 THROUGH 113: Many of the environmental impact concerns expressed will be evaluated by State and local entities under the regulatory authority of other regulations. This project was reviewed in accordance with the WQMP rule at N.J.A.C. 7:15 and was found to meet the criteria for designation as SSA. Before moving forward, the project must obtain any other required Department permits and approvals. Those approvals will look at additional factors that are beyond the scope of the WQMP rule.

114. COMMENT: The complaints against this needed housing development are only a NIMBY issue against low-income housing. (80)

RESPONSE: The Department acknowledges the commenter's opinion.

115. COMMENT: Harding Township is in support of the proposed WQMP amendment. The project in question was part of a court-approved settlement agreement with both FSHC and the developer of this project, KRE. The KRE settlement is dated February 12, 2018 and

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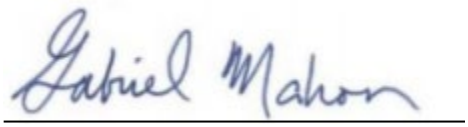
specifically provides for "Amendment to Wastewater Management Plan to Include the Mt. Kemble Development" at Paragraph 7 of the agreement (See Exhibit A). That settlement was approved after a duly noticed fairness hearing pursuant to Morris County Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, (Law Div., 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986). The noticing procedures pursuant to the Morris County case bind parties and non-parties alike. Morris County Fair Hous. Council v Boonton Twp., 197 N.J. Super. at 364-65. No objections were raised at the fairness hearing relative to this issue. The objections could have, and should have, been raised at that time. Since they have not, this post-fairness hearing objection should be disregarded. (123)

RESPONSE: The Department acknowledges the comment. There are no exemption provisions in the WQMP rule for affordable housing projects. Developments that are part of a court-approved settlement agreement are still required to meet all requirements of N.J.A.C. 7:15 and the SSA eligibility criteria.

116. COMMENT: The environmental issues are not significant nor proven. The drawing showing flow into the Silver Brook is not supported by fact and is hypothetical. There is a sewer system for this development to eliminate any real issues from septic systems. Only if there were septic issues would there be a risk. (80)

RESPONSE: The Department acknowledges the comment.

Sewer service is not guaranteed based upon 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.



6/13/2024
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