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JIM RILEE
Chairman

MARGARET NORDSTROM
Executive Director

May 24, 2017

Michele Putnam
Director
Division of Water Quality
PO Box 420
Trenton, NJ 08625-0420

Re: Highlands Consultation
New Jersey Pollutant Discharge Elimination System (NJPDES) Surface Water Permit
NJPDES Permit No. NJ0102563
Tewksbury Township, Hunterdon County

Dear Ms. Putnam:

We are in receipt of a letter dated May 17, 2017 from Rachel Pepe of the Department requesting that the Highlands Council (Council) consult with the Department as required by N.J.A.C. 7:38-1.1(g) with respect to the above-referenced New Jersey Pollutant Discharge Elimination System (NJPDES) Surface Water Permit.

The application is for a facility with a NJPDES flow value of 0.09653 million gallons per day (MGD). The permit identifies a discharge point to the North Branch Rockaway Creek, classified as FW2-TM(C2) waters. The proposed wastewater treatment facility will serve a proposed office development to be located in Tewksbury Township (Township). The proposed office project is located on Block 46.01, Lot 7 and Block 47, Lot 48 in the Planning Area of the Township. The Township is a fully conforming Highlands Planning Area municipality.

In accordance with N.J.A.C. 7:38-1.1(g) and (h), the Council has reviewed the draft permit against the Highlands Regional Master Plan (RMP) and has determined that the project is incompatible with the resource protection goals of the RMP and is therefore **"Inconsistent."**

This determination was made based on the following Goals, Policies and Objectives (GPOs) of the RMP. Specifically, because the permit proposes a treatment facility and associated discharge that are considered to fall within the category of a "public wastewater collection and treatment systems and community on-site treatment facility" and "wastewater utility services" as described in the RMP, and the treatment facility and discharge are to be located in the Protection Zone of the Planning Area, the following GPOs apply:

Objective 2K3c: Prohibit new, expanded or extended public wastewater collection and treatment systems and community on-site treatment facilities within the

Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area...

The proposed permit would permit new, expanded or extended public wastewater collection and treatment systems and community on-site treatment facilities within the Protection Zone of the Planning Area. The proposed permit is therefore incompatible with the resource protection standards of the RMP as stated in Objective 2K3c.

Objective 6H1b: Prevent the extension or creation of water and wastewater utility services in the Protection Zone, Conservation Zone, and Environmentally Constrained Sub-Zones of the Planning Area, unless they meet the requirements of Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and will maximize the protection of agricultural and environmentally sensitive resources.

The proposed permit would allow the extension or creation of water and wastewater utility services in the Protection Zone of the Planning Area, and does not satisfy the standards established in the RMP and stated in Objective 6H1b, Policy 2J4 and its associated Objectives 2J4a through 2J4d, nor Policy 2K3 and its associated Objectives 2K3a through 2K3e. The proposed permit is therefore incompatible with the resource protection standards of the RMP.

Please note that the Consistency Determination review was conducted only regarding the facility with a NJPDES flow value of 0.09653 million gallons per day (MGD) that will discharge treated, disinfected, sanitary wastewater into the North Branch Rockaway Creek, classified as FW2-TM(C2) waters. The North Branch Rockaway Creek is a Highlands open water. Highlands open waters are defined as "all springs, streams including intermittent streams, wetlands, and bodies of surface water, whether natural or artificial, located wholly or partially within the boundaries of the Highlands Region" (NJAC 7:38-1.4). Highlands open waters have a 300 foot buffer within which no disturbance is permitted (NJAC 7:38-3.6(a); RMP Policy 1D4, p. 142). Linear development, defined to include infrastructure such as sewerage pipes (NJAC 7:38-1.4) is permitted "[p]rovided there is no feasible alternative for the linear development outside the Highlands open water or Highlands open water buffer." Applicants "shall demonstrate that there is no other location, design and/or configuration for the proposed linear development that would reduce or eliminate the disturbance to a Highlands open water or the adjacent buffer" (NJAC 7:38-3.6(b)1). No alternative analysis has been provided to support that the linear development is necessary, nor has any information been provided to indicate that the linear development would reduce or eliminate the disturbances to a Highlands open water or the adjacent buffer.

It should be noted that the Council considers the proposed permit to meet the definitions of wastewater collections systems noted in Objective 2K3c and wastewater utility services noted in Objective 6H1b. The only other standards within the RMP relevant to wastewater systems would require compliance with the nitrate dilution standards for on-site disposal systems for the Protection Zone. The treatment and discharge of wastewater is considered either under Objectives 2K3c and 6H1b or under Objective 2L2a, and in this case the Highlands Council has determined the proposed facility falls under Objectives 2K3c and 6H1b of the RMP.

In addition, although no review of any concept plan or development plan was conducted, the approval of the draft permit will allow significant development of the property which the Council has determined will impact the significant Highlands resources that exist on the site. These include forests in a forest resource area, critical habitat, wetlands, streams, a pond, open water buffers, riparian areas,

prime ground water recharge, and well head protection areas. The project would allow significant new development in the Protection Zone as proposed that would negatively impact RMP resource protections and exceed water quality and quantity capacity constraints, as indicated by the following GPOs:

Objective 1A2d: To prohibit through Plan Conformance, local development review and Highlands Project Review the expansion or creation of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into forested areas of the Forest Resource Area within the Planning Area except as provided for in Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and within the Preservation Area except as provided for in Policy 2I1 and Objectives 2I1a and 2I1b.

Policy 1B2: To limit through local development review and Highlands Project Review human development of forests to low impact residential development in the Protection Zone and the Conservation Zone in the Planning Area.

Objective 1D4e: In the Protection and Conservation Zones of the Planning Area, proposed disturbances of Highlands Open Waters buffers shall only occur in previously disturbed areas, unless a waiver is granted by the Highlands Council under Policy 7G2. or purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered “land improvements,” “development,” “land disturbances,” or “land uses.” Such proposed disturbances must demonstrate full utilization of the following performance standards in the listed order, to demonstrate the necessity of an encroachment into Highlands Open Waters buffers: 1) avoid the disturbance of Highlands Open Waters buffers; 2) minimize impacts to Highlands Open Waters buffers; and 3) mitigate all adverse impacts to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer, in compliance with Objective 1D4h. Minimization and mitigation opportunities shall be considered only upon a clear and convincing demonstration by the applicant that the protection buffer cannot be avoided and in no case shall the remaining buffer be reduced to less than 150 feet from the edge of Highlands Open Waters, unless a waiver is granted by the Highlands Council under Policy 7G2 and the proposed disturbance complies with Objective 1D4c.

Objective 1D5c: Prohibit modifications to Riparian Areas in the Protection Zone except where a waiver is approved by the NJDEP or the Highlands Council under Policy 7G1 or 7G2.

Policy 1F2: To prohibit through Plan Conformance, local development review and Highlands Project Review the direct impact of new human development or expansion or increased intensity of existing development within Critical Habitat.

Objective 1F6a: Prohibit direct impacts from new development or expansion or increased intensity of existing development that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, except as permitted through the issuance of a waiver under Policy 7G1 or 7G2.

Objective 2K3f: All development within the Highlands Region, in areas which are not served by public wastewater collection and treatment system or community on-site treatment facility, shall be at a density that can be supported by septic systems under Goal 2L. Where


cluster development in the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-Zones of the Planning Area shall be served by on-site wells, and the undeveloped land is preserved for agricultural purposes in perpetuity, the cluster development and the Agriculture Retention/Farmland Preservation Plan required by Objective 2K3d in combination shall include provisions for best management practices that protect the on-site wells from contamination resulting from agricultural practices and shall include provisions to minimize or reduce net pollutant loadings from the total cluster project area including the preserved agricultural lands.

Policy 6C1: To limit new human development in the Protection Zone to redevelopment, exempt activities, and environmentally-compatible low density new land uses, in accordance with RMP resource protection needs and water quality and quantity capacity constraints and to ensure that the impacts of development using exemptions under the Highlands Act (see Policy 7F1) are considered in regional protection measures.

Policy 6C2: To ensure through Plan Conformance, local development review and Highlands Project Review that any future development or redevelopment which does occur in a Protection Zone is subject to standards and criteria which protect the land and water resources of the Protection Zone from any potential adverse impact to the maximum extent possible.

The permit applicant may contact the Council to further review options for relief provisions of the RMP or the potential for addressing the components listed under Objective 2K3c. Finally it should be noted that any project proposed for this site will require review under the municipality's adopted Highlands Area Land Use Ordinance, which would require consistency with the above mentioned provisions of the RMP, subject to C.13:20-22, (Plans, regulations entitled to strong presumption of validity). If you have any questions regarding the attached Consistency Determination, please contact me at (margaret.nordstrom@highlands.nj.gov) or 908-879-6737 ext. 101.

Sincerely,



Margaret Nordstrom
Executive Director

c: Mayor Dana Desiderio, Tewksbury Township