



JON S. CORZINE
Governor

State of New Jersey

Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.highlands.state.nj.us



JOHN R. WEINGART
Chairman

EILEEN SWAN
Executive Director

MEMORANDUM

To: Natural Resources Committee
Highlands Water Protection and Planning Council

From: Eileen Swan, Executive Director
Jim Hutzelmann, Water Resource Engineer
Erin Lynam, Resource Management Specialist

Date: August 14, 2007

Re: Application Type: *Proposed Amendment to Upper Raritan WQMP*
Name: *Kushner-Mine Hill*
Municipality: *Mine Hill*
County: *Morris*
Highlands Act Area: *Planning Area*
LUCM Location: *Protection Zone*
Property: *Block 411, former Lot 1; Block 606, former Lot 1; Block 1002, former Lot 1; & Block 1101, former lot 1*
Proposed Use: *Residential housing*
Nearest Waterway (Name): *Unnamed Headwater Tributary to Lamington River*
Wastewater: *Proposed new discharge to ground water*
Water: *Distribution - Mine Hill Township Water Department*
Supply - Morris County Municipal Utility Authority (MCMUA)

1.0 PROJECT DESCRIPTION

This is a proposed amendment to the Upper Raritan Water Quality Management Plan (WQMP) through the Mine Hill Township Wastewater Management Plan (WMP) to allow for construction of the proposed Kushner-Mine Hill development, a residential development on Block 411, former Lot 1; Block 606, former Lot 1; Block 1002, former Lot 1; & Block 1101, former lot 1 (subdivided into numerous lots) within Mine Hill Township, Morris County. The proposed project location is bounded to the south by the Randolph Township - Mine Hill municipal boundary, to the east by Canfield Road and to the north by United States Highway Route 46.

The proposed amendment, as initially reviewed by the NJDEP, consisted of 736 multi-story townhouse and apartment units comprised of 118 one-bedroom stacked apartments, 354 two-bedroom stacked apartments, 238 two-bedroom townhouses and 26 three-bedroom townhouses, two recreation centers and two swimming pools. Wastewater is proposed to be treated by an on-site wastewater treatment system, and be discharged to ground water. The projected wastewater flow is 160,644 gallons per day (gpd). The sewer service area for this proposal would encompass approximately 114 acres of the 228-acre project property.

However, a purchase agreement was entered into between Canfield Building Associates and the Township of Mine Hill, which, if implemented, would reduce the number of units from 735 non-age restricted residential units to 275 age-restricted residential units. The projected wastewater flow from the proposed 275 age-restricted dwelling units, consisting of 100 two-bedroom units and 175 three-bedroom units, and recreation center, would be 59,747 gpd. The wastewater would be treated by the proposed on-site discharge to ground water (DGW) wastewater treatment system. This agreement would preserve approximately 178 acres as municipally-owned open space. Subsequently, if executed, the purchase agreement would reduce the proposed sewer service area for the proposed Canfield Development STP to approximately 50 acres of the 228-acre project property. The sewer service area resulting from this alternate proposal would include the area located on the southern portion of the project site between the intersection of Canfield Avenue and Berkley Court and Green Lane.

The review of the proposed Kushner-Mine Hill development amendment is the result of an analysis of infrastructure capacity and the extent of environmentally resources. This review is based upon the standards and policies set forth in the draft Highland Regional Master Plan (draft RMP).

2.0 RECOMMENDATIONS

Analysis

The Highlands Council has identified instances where the Kushner-Mine Hill development proposed development and sewer service area are inconsistent with the goals, requirements, and provisions of the draft RMP. These conflicts are discussed below:

Environmentally Sensitive Lands within the Proposed Development Footprint

During the review of the proposed service area, the Highlands Council staff identified the presence of environmentally sensitive lands whose development or alteration is inconsistent with the draft RMP. The project includes the proposed disturbance of steep slopes of greater than 20%, greater than 15% within forest, and greater than 10% within the riparian area. The project includes the proposed disturbance of Highlands Open Water Protection Areas within 300 ft of the on-site wetlands associated with the unnamed headwater tributary to the Lamington River. The Highlands Council staff also identified the proposed disturbance of riparian areas, specifically, floodprone areas, wetlands and hydric soil complexes throughout the site. The Council staff recommends that the application be modified to exclude these all of these environmentally sensitive areas from the sewer service area and proposed development footprint.

In addition, the Council staff identified potential inconsistencies with the draft RMP relating to the protection of Forests and Critical Habitat. Review of the proposed WMP amendment identified the

site as nearly entirely forested and located within a moderate integrity forested area. For forest protection, the policy is “limit permissible uses within a moderate integrity forest to maintenance of pre-existing uses and permit removal of woody vegetation from forested lands upon Highlands Council approval of a forest mitigation plan and low impact development best management practices.” Staff recommends the application be modified to exclude these areas from the sewer service area and proposed development footprint or provide a forest mitigation plan with mitigation and application of low impact development best management practices.

Review of the proposed WMP amendment identified Landscape Rank 2 and 3 critical habitat (Great blue heron foraging and Wood turtle) and vernal pool protection areas within the proposed sewer service area and proposed development footprint. For critical habitat, the policy for the Protection Zone is “Prohibit new land uses or modification to existing land uses within the Critical Habitat Resource Area or within any critical habitat feature unless approved by the Highlands Council.” Staff recommends the application be modified to exclude these areas from the sewer service area and proposed development footprint.

Water Quality/Recharge Limitations for the Proposed Development

The proposed WMP amendment includes creation of a new on-site sanitary wastewater discharge to ground water. Review of the proposed WMP amendment identified Prime Recharge Areas within the proposed sewer service area and proposed development footprint. The policy for Prime Recharge Areas is “prohibit uses of land within a prime ground water recharge area that may reduce recharge volumes, or other uses that may impair water quality within or draining to a prime ground water recharge area.” Placement of intensive development within the Prime Recharge Area will introduce pollutants that will degrade recharge quality, inconsistent with the draft RMP.

Capacity Limitations for the Proposed Development

The proposed WMP amendment includes extension of an adjacent public water utility owned by the Mine Hill Township Water Department. The amendment also creates a new sewer service area. The draft RMP has a policy that prohibits the extension or expansion of water and wastewater utility systems in the Protection Zone unless approved by the Council for public health and safety. Additionally, the Mine Hill Township Water Department is solely supplied by water from the Morris County Municipal Utilities Authority (MCMUA). The MCMUA’s wells are located in two HUC14s with deficits of net water availability. The draft RMP addresses this constraint by preventing increased consumptive and depletive uses in deficit HUC14s. It should be noted that the MCMUA has water allocation permits for their diversion based upon NJDEP-approved analyses, and that this development would be supplied under the existing permits.

Given that the project does not address public health concerns, the proposed utility extension and water deficit are inconsistent with the policies of the draft RMP. Staff recommends that the water main extension not be permitted by NJDEP, nor the wastewater utility service area and facility be approved. If the extension and the new facility are allowed by NJDEP, the applicant should demonstrate that consumptive water uses have been minimized through water conservation measures.

Staff Recommendations

The review of the proposed WQMP/WMP amendment reveals several major inconsistencies with the draft RMP, including the disturbance of environmentally sensitive lands (steep slopes, Highlands Open Water protection areas, riparian areas, and critical habitat), expanding development into Prime Recharge Areas, the extension of water and wastewater utility service into the Protection Zone, and water availability deficits. Based on these conflicts, staff recommends that the Council should recommend NJDEP denial of the WQMP/WMP amendment until the applicant modifies the proposed development to avoid these conflicts.

In sum, the entire southern portion of the proposed 50-acre sewer service area conflicts with the draft RMP. Staff reviewed the environmental constraints on the remaining 178 acres of the site, to determine whether there is potential for redefinition of the 50-acre development site to avoid environmental conflicts, with the conclusion that approximately 90% of the site contains one or more conflicts with the draft RMP policies; modification of the proposal to use another portion of the site may not be feasible at the proposed density.

Prior to final adoption of the RMP, the Highlands Council's purview is to provide recommendations to NJDEP on WQMP amendments. Given that the NJDEP may ultimately approve the amendment despite the Council's findings and recommendations, it would be prudent to include suggestions that could mitigate the project's impact if NJDEP would include them as conditions in their approval. Specifically, the disturbance of steep slopes, the open water buffers, riparian areas, critical habitat, and prime recharge areas should be reduced to the maximum extent possible and a conservation easement should be instituted around the remaining environmentally sensitive lands. The impacts on water availability deficits should be minimized by the use of water conservation measures, water reclamation for beneficial reuse, or implementation of a Water Management Plan by MCMUA.