

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

DIVISION OF COASTAL AND LAND USE PLANNING

Adopted Amendments to the Northeast, Upper Delaware and Upper Raritan Water Quality Management Plans

Public Notice

Take notice that on **APR 25 2013**, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Statewide Water Quality Management (WQM) Planning rules, N.J.A.C. 7:15, and P.L. 2011, c. 203, the Department of Environmental Protection (Department) adopted amendments to the Northeast WQM Plan, the Upper Delaware WQM Plan, and the Upper Raritan WQM Plan. These amendments adopt a Future Wastewater Service Area (FWSA) map for that portion of Morris County within the Northeast WQM planning area, the Upper Delaware WQM planning area, and the Upper Raritan WQM planning area (all of Morris County with the exception of those portions of Jefferson Township, Mount Arlington Borough, Mount Olive Township, and Netcong Borough that are located in the Sussex County WQM planning area). Notice of the Department's proposal of these amendments was published in the New Jersey Register on July 2, 2012, at 44 N.J.R. 1919(a). This adoption is only of the FWSA map for that portion of Morris County within the Northeast WQM planning area, the Upper Delaware WQM planning area, and the Upper Raritan WQM planning area.

The Morris County FWSA map amending the Sussex County WQM planning area is proceeding separately. The Sussex County Board of Chosen Freeholders is the designated planning agency for the Sussex County WQM Plan and it operates pursuant to plan amendment procedures approved by the Department consistent with N.J.A.C. 7:15-3.4(d). Notice of the Morris County FWSA map amending the Sussex County WQM Plan was published in the New Jersey Register on January 7, 2013, at 45 N.J.R. 67(a). A public hearing on the Morris County FWSA map amending the Sussex County WQM Plan was held on Wednesday, February 13, 2013, by the

Sussex County Board of Chosen Freeholders. The public comment period on the Sussex County WQM Plan closed 15 days following the February 13, 2013, public hearing.

The adopted amendments that are the subject of this notice, for that portion of Morris County within the Northeast WQM planning area, the Upper Delaware WQM planning area, and the Upper Raritan WQM planning area, were submitted on behalf of the Board of Chosen Freeholders of Morris County as the responsible wastewater management planning agency. The proposed amendments were submitted to the Department pursuant to P.L. 2011, c. 203, enacted on January 17, 2012, which permits the wastewater management planning agency to prepare and submit to the Department at least that portion of a wastewater management plan (WMP) designating sewer service area (SSA) which complies with the Department's regulatory criteria. The adopted map, titled "Future Wastewater Service Areas, Morris County New Jersey," supersedes all wastewater service area mapping for Morris County currently contained in the Northeast WQM Plan, the Upper Delaware WQM Plan, and the Upper Raritan WQM Plan, and also includes areas outside of Morris County served by wastewater treatment facilities located within Morris County, which have been included as part of an adopted WMP.

The adopted FWSA map identifies areas to be served by sewage treatment facilities/sewer systems as well as areas to be served by septic systems with design flows of equal to or less than 2,000 gallons per day. The adopted map modifies the previously approved SSA to exclude environmentally sensitive areas that are not currently connected to sewer systems. Additionally, the map removes areas from SSA based on local planning initiatives, and also includes areas previously excluded from SSA based on local planning objectives. These amendments only modify the wastewater service area mapping portions of the above referenced WQM plans.

Pursuant to P.L. 2011, c. 203, the Department, in consultation with the applicable wastewater management planning agency, may approve the inclusion of land within a SSA notwithstanding that existing treatment works may not currently have the assured capacity to treat wastewater from such land without infrastructure improvements or permit modifications. Therefore, amendments to update a SSA may be approved if such actions are compliant with the applicable sections of the WQM Planning rules (N.J.A.C. 7:15) regardless of whether capacity has been

fully assessed. Additional issues which may need to be addressed for any new or expanded wastewater treatment facility proposal include, but are not limited to, compliance with stormwater regulations, antidegradation, effluent limitations, water quality analysis, and exact locations and designs of future treatment works. Additionally, sewer service to any particular project is subject to contractual allocations between municipalities, authorities and/or private parties, and is not guaranteed by this amendment. Finally, P.L. 2011, c. 203, expires on January 17, 2014, and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15.

The Department and Morris County have held numerous meetings with the public, municipal officials, and affected agencies over the past four years. Further, in accordance with Administrative Order No. 2010-03 (AO #2010-3) signed by Commissioner Martin, a public meeting was held on February 9, 2011, to allow public review and comment on the then-current draft of Morris County SSA. As a result, the Department and the County have received continuous input from residents, municipal officials, and other affected agencies regarding mapping corrections and other issues.

In accordance with N.J.A.C. 7:15-5.24, environmentally sensitive areas have been assessed to determine what areas must be excluded from the adopted SSAs. Pursuant to N.J.A.C. 7:15-5.24, environmentally sensitive areas are defined as contiguous areas of 25 acres or larger consisting of habitat for threatened and endangered wildlife species as identified on the Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, Natural Heritage Priority Sites, Category One special water resource protection areas, and wetlands, alone or in combination.

In accordance with N.J.A.C. 7:15-5.24(b)1, to determine areas designated as threatened or endangered wildlife species habitat, the Department utilized the Division of Fish and Wildlife's Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, versions 2.1 and 3.0 (Landscape Project), as applicable. Areas identified by the Landscape

Project as being suitable habitat for threatened and endangered species are not included in the adopted SSAs except as provided under N.J.A.C. 7:15-5.24(e) through (h).

In accordance with N.J.A.C. 7:15-5.24(b)2, areas mapped as Natural Heritage Priority Sites are not included in the adopted SSA, except as provided under N.J.A.C. 7:15-5.24(e) through (h).

In accordance with N.J.A.C. 7:15-5.24(b)3, areas identified as special water resource protection areas along Category One waters and their tributaries are not included in the adopted SSAs, except as provided under N.J.A.C. 7:15-5.24(e) through (h). Pursuant to N.J.A.C. 7:8-5.5(h), a 300-foot buffer is applied to both sides of a stream measured from the top of bank of an intermittent or perennial stream, or centerline if the bank is not defined, and from the defined edge of a lake, pond or reservoir at bank-full flow or level. Category One waters, their tributaries, and all Highlands waters, are afforded a 300-foot buffer. In addition, as required under N.J.A.C. 7:15-5.20(b)3, the adopted FWSA map text indicates that development in riparian zones, or designated river areas, may be subject to special regulation under Federal or State statutes or rules. Riparian zones or buffers are established along all surface waters, based on the surface water body's classification designated at N.J.A.C. 7:9B, under the following regulations: the Flood Hazard Area Control Act rules (N.J.A.C. 7:13), the Highlands Water Protection and Planning Act rules (N.J.A.C. 7:38), the Stormwater Management rules (N.J.A.C. 7:8), and the WQM Planning rules (N.J.A.C. 7:15). Most development within these riparian zones is regulated by these programs.

In accordance with N.J.A.C. 7:15-5.24(b)4, areas mapped as wetlands pursuant to N.J.S.A. 13:9A-1 and 13:9B-25 are not included in the adopted SSA, except as provided under N.J.A.C. 7:15-5.24(e) through (h).

Pursuant to N.J.A.C. 7:15-5.24(c), certain coastal planning areas, not applicable here, must also be excluded from SSA. Specifically, there are no Coastal Fringe Planning Areas, Coastal Rural Planning Areas, or Coastal Environmentally Sensitive Areas in the Northeast WQM planning area, the Upper Delaware WQM planning area, or the Upper Raritan WQM planning area.

In accordance with N.J.A.C. 7:15-5.24(d)1, areas with Federal 201 grant limitations that prohibit the extension of sewers are excluded from the adopted SSA either where local mapped information exists delineating these areas, or through a narrative description where mapping does not exist, except as provided under N.J.A.C. 7:15-5.24(f)1. Where a narrative approach has been used, it is noted as text on the adopted FWSA map. Pre-existing grant conditions and requirements (from Federal and State grants or loans for sewerage facilities), which provide for restriction of sewer service to environmentally sensitive areas, are unaffected by adoption of these amendments and compliance is required.

In addition to the environmentally sensitive areas with Federal 201 grant limitations that prohibit the extension of sewers identified under N.J.A.C. 7:15-5.24(d)1, there are other special restricted areas, not applicable here, which must also be excluded from SSA pursuant to N.J.A.C. 7:15-5.24(d)2 through 4. Specifically, there are no beaches, coastal high hazard areas, or dunes in the in the Northeast WQM planning area, the Upper Delaware WQM planning area, or the Upper Raritan WQM planning area.

As provided under N.J.A.C. 7:15-5.24(e) through (h), limited environmentally sensitive areas have been included in SSAs. Where applicable, Department Permits or Jurisdictional Determinations have been utilized to determine the extent of the SSA on individual lots.

In accordance with N.J.A.C. 7:15-3.10, the Highlands Water Protection and Planning Council (Council) was provided an opportunity to review and comment on the proposed amendment within the Highlands Region for consistency with the adopted Regional Master Plan (RMP). In correspondence dated September 10, 2012, the Council advised Morris County that the proposed amendments are consistent with the RMP when a Water Use and Conservation Management Plan (WUCMP) is adopted for the deficit HUC 14 watersheds in Morris County, pursuant to Executive Order 114 (Corzine). In correspondence dated April 10, 2013, the Council supplemented and clarified the earlier correspondence noting that the Council consents to the adoption of the proposed amendments with the understanding that when a full WMP for Morris County is submitted to the Department for review, a WUCMP will need to be adopted for deficit HUC 14 subwatersheds.

The notice of this amendment proposal was published in the New Jersey Register on July 2, 2012, at 44 N.J.R. 1919(a). A public hearing was held on August 13, 2012, at the Morris County Public Library.

The following people provided comments on this amendment during the public comment period:

Number – Commenter Name – Affiliation

1. David Klemm, Hatch Mott McDonald (Hackettstown MUA Engineer)
2. Theodore Cassera, Omland Engineering Associates (Consulting Engineer for St. Mary's Abbey)
3. Mayor Thomas Andes, Denville Township
4. Eric Keller, Omland Engineering (on behalf of RAM Associates, LLC)
5. Alex Oppen, RAM Associates, LLC
6. Patrick McClellan, MCB Engineering Associates (engineering consultant to Glenmont Commons Developers, LLC)
7. Michael Kobylarz, Roxbury Township Director of Utilities
8. Robert Goodsell, Post, Polak, Goodsell, MacNeill & Strauchler (on behalf of DM Airports, Ltd.)
9. Dennis Toft, Wolff & Samson (representing River Park Business Centers, LLC)
10. Elliot Ruga, New Jersey Highlands Coalition
11. Wilma Frey, New Jersey Conservation Foundation
12. Adam Brewer, Assistant Administrator Montville Township
13. Robert Bongiovanni, Executive Director Two Bridges Sewerage Authority
14. Timothy Touhey, New Jersey Builders Association
15. James Slate, Morris Township Engineer
16. Michael Wynne, Executive Director Hanover Sewerage Authority

As noted below in response to specific comments, upon review of the comments requesting to modify the FWSA map, the Department is adopting the proposed amendments with minor changes pursuant to N.J.A.C. 7:15-3.4(g)9ii. These minor changes do not effectively destroy the

value of the public notice of the proposed amendments and are technical/administrative corrections or modifications. Comments requesting to include or exclude SSA, which was not reflected in the proposed amendment and were found to be a substantial change, are not adopted herein. Substantial changes include those changes to the proposed amendment which the Department has determined would enlarge or curtail who and what will be affected by the proposed amendment, change what is being prescribed, proscribed, or otherwise mandated by the proposed amendment, or enlarge or curtail the scope of the proposed amendment and its burden on those affected by it. Thus, changes which would enlarge or curtail which properties would be affected by the adopted FWSA map and/or the way in which properties would be affected by the adopted FWSA map would be considered substantial. Making such substantial changes on adoption would effectively destroy the value of the public notice and, thus, a new notice and public comment period are required prior to consideration of such changes pursuant to the process set forth in N.J.A.C. 7:15-3.4.

Any party may submit an application to the Department for a site specific amendment or revision, as applicable, to a WQM plan to include or exclude additional areas and/or facilities in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable.

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

1. Comment: The commenter requested inclusion of Block 8500, Lot 6, and Block 8800, Lots 17 & 27, in Mount Olive Township as they were already connected to the Hackettstown Municipal Utilities Authority SSA. (1)

Response: The Department agrees that the parcels in question were inadvertently omitted from the proposed SSA and should have been included in SSA as they are already connected to the sewer system. The Department has determined that these are technical corrections and so has included Block 8500, Lot 6 and Block 8800, Lots 17 & 27, in the SSA as part of this adoption.

2. Comment: Commenter 2 requests that the portions of Block 4501, Lots 2.01 and 2.04, in Morris Township, site of the St. Mary's Abbey and Delbarton High School Campus facilities remain included in SSA. In addition, Commenter 2 notes that Block 4501, Lot 2.04, is developed as recreational facilities and is currently connected to the sanitary sewer system. (2)

Commenter 15 also states that Block 4501, Lot 2.04, is already developed and should remain in SSA. (15)

Response: The Department agrees that Block 4501, Lot 2.04, was inadvertently omitted from the proposed SSA and should have been included in SSA as it is already connected to the sewer system. The Department has determined that this is a technical correction and so has included it in the SSA as part of this adoption.

However, the portion of Block 4501, Lot 2.01, not included in the proposed SSA continues to be excluded from SSA. Unlike Block 4501, Lot 2.04, the parcel is not currently connected to the sewer system. Areas of this parcel were removed due to their environmental sensitivity, consistent with the WQM Planning rules at N.J.A.C. 7:15-5.24, because they are identified as wetlands, as within the special water resource area (300-foot buffer) to two tributaries of the Whippany River which is a Category One water, and as habitat for threatened and endangered species, including the Indiana Bat which is federally protected.

3. Comment: The commenters request that Block 40001, Lot 4, and Block 40203, Lot 1, of Denville Township remain included in SSA. The commenters submitted a Freshwater Wetlands Letter of Interpretation-Line Verification and Indiana Bat Presence/Absence Survey Report to rebut the presumption that the environmental data utilized to remove the parcels from SSA is correct. (3, 4, 5)

Response: As recognized by the commenters, these sites are identified as environmentally sensitive, consistent with the WQM Planning rules at N.J.A.C. 7:15-5.24. The areas are identified as wetlands and habitat for threatened and endangered species. Although the commenters have submitted information to rebut the presumption that these areas be identified as

environmentally sensitive based on the data relied upon and, thus, should be included in SSA, the Department has determined that making such a modification to the FWSA map upon adoption would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. Therefore, the Department has not evaluated the information to determine whether the map should be modified, and the requested modification to SSA has not been made. However, any party may submit an application to the Department for a site specific amendment or revision, as applicable, to a WQM plan to include or exclude additional areas and/or facilities in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable. The WQM Planning rules at N.J.A.C. 7:15-5.24(e) allow an applicant for a site specific amendment to rebut the presumption that environmental data, relied upon by the Department in identifying areas as environmentally sensitive, is correct.

4. Comment: The commenter requests that Block 10002, Lot 3, of Denville Township be transferred from the Greystone Park Psychiatric Hospital SSA to the Rockaway Valley Regional Sewerage Authority SSA. (6)

Response: Block 10002, Lot 3, was appropriately placed within the Greystone Park Psychiatric Hospital SSA. The transfer of the parcel to the Rockaway Valley Regional Sewerage Authority SSA would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. Therefore, the requested modification to SSA has not been made. Furthermore, the Department would need more information than what was submitted by the commenter to make the modification through the site specific amendment process. Any party may submit an application to the Department for a site specific amendment or revision, as applicable, to a WQM plan to include or exclude additional areas and/or facilities in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable.

5. Comment: The commenter requests that Block 9901, Lot 1; Block 9902, Lot 1; Block 9903, Lot 1; Block 9904, Lots 1 & 2; Block 9905, Lot 1; Block 9908, Lot 1; Block 9911, Lots 1, 2 & 3 (remainder); Block 10006, Lot 1; Block 10010, Lot 1 & 2; Block 10014, Lots 4, 5, 6, 7, 8 & 9;

Block 10015, Lots 1 & 2; Block 10018, Lots 1, 2, 3, 4, & 5; and Block 10604, Lots 2 & 3, in Roxbury Township, be included in the Musconetcong Sewerage Authority SSA. Under separate cover to Morris County, the commenter requested that Block 10101, Lots 1, 5, 6, 9, 12, 13, 21 & 22, be included in the SSA to enable the future connection of existing homes, currently served by septic systems of unknown age and condition, to the sewer system. Additionally, under separate cover, the commenter requested that Block 10101, Lot 23, be included in SSA. (7)

Response: Block 9901, Lot 1; Block 9902, Lot 1; Block 9903, Lot 1; Block 9904, Lots 1 & 2; Block 9905, Lot 1; Block 9908, Lot 1; Block 9911, Lots 1, 2 & 3; and Block 10604, Lots 2 & 3, are located in the Sussex County WQM Planning Area and so are not subject to this amendment. Block 10006, Lot 1; Block 10010, Lot 1 & 2; Block 10014, Lots 4, 5, 6, 7, 8 & 9; Block 10015, Lots 1 & 2; and Block 10018, Lots 1, 2, 3, 4, & 5; and Block 10101, Lots 1, 5, 6, 9, 12, 13, 21, 22 & 23, are located within the Upper Raritan WQM Planning Area, and are subject to this amendment.

Block 10006, Lot 1; Block 10010, Lot 1 & 2; and Block 10015, Lot 1, were identified as environmentally sensitive and removed from SSA pursuant to N.J.A.C. 7:15-5.24. The areas removed are identified as habitat for threatened and endangered species.

Block 10101, Lots 1, 5, 6, 9, 12, 13, 21 & 22; Block 10014, Lots 4, 5, 6, 7, 8 & 9; Block 10015, Lot 2; and Block 10018, Lots 1, 2, 3, 4, & 5, were previously included in a general wastewater service area for wastewater facilities with planning flows less than 20,000 gpd which discharge to groundwater. These sites were removed from this designation pursuant to the WQM Planning rules, specifically N.J.A.C. 7:15-5.2(f), which does not allow the establishment or reestablishment of such a wastewater planning area as part of a new or updated WMP. However, as no specific request was made to include these parcels in SSA prior to the proposal of this amendment, the sites were not included in the proposed SSA. The requested modification to the SSA constitutes a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. Therefore, the requested modification to SSA for these parcels has not been made.

Block 10101, Lot 23, was removed from SSA because a large portion of the parcel was identified as environmentally sensitive pursuant to N.J.A.C. 7:15-5.24. The area removed is identified as habitat for threatened and endangered species. In addition, please see the Department's response to Comment 10 below regarding the inclusion of Block 10101, Lot 23, recently purchased by Roxbury Township as open space.

6. Comment: The commenter requests inclusion of a portion of Block 6401, Lot 2, part of the Morristown Municipal Airport in Hanover Township into the Hanover Sewerage Authority SSA to allow the eventual construction of a small building which will contain a lavatory facility on a small upland portion of the site. The commenter submitted information to rebut the presumption that the parcel is suitable habitat for the Indiana Bat is correct. (8)

Response: The parcel in question was removed due to its environmental sensitivity, consistent with the WQM Planning rules at N.J.A.C. 7:15-5.24. The vast majority of the parcel is identified as wetlands, although the specific site of the proposed lavatory facility does not appear to be wetlands. Considering the extent of the wetlands identified on the parcel and the limited size of the potential uplands, without a Freshwater Wetlands Letter of Interpretation or permit consistent with the requirements of the WQM Planning rules at N.J.A.C. 7:38-5.24(e), the Department did not include any portion of the parcel in SSA. Further, as the commenter notes, recent updates to the Landscape Project (version 3.1) identify the parcel as habitat for threatened and endangered species, including the Indiana Bat which is federally protected, and, thus, the parcel, including the specific site of the proposed lavatory facility, would be excluded from SSA pursuant to N.J.A.C. 7:15-5.24.

The commenter has submitted information to rebut the presumption that this parcel be identified as suitable habitat for the Indiana Bat based on the data relied upon and, thus, should be included in SSA. Nevertheless, the Department has not evaluated the information to determine whether the map should be modified, and the requested modification to SSA has not been made. Making such a modification to the FWSA map upon adoption would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. However, any party may submit an application to the

Department for a site specific amendment or revision, as applicable, to a WQM plan to include or exclude additional areas and/or facilities in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable. The WQM Planning rules at N.J.A.C. 7:15-5.24(e) allow an applicant for a site specific amendment to rebut the presumption that environmental data, relied upon by the Department in identifying areas as environmentally sensitive, is correct. In this instance, because of the extent of wetlands on the parcel as well as the identification of the parcel as habitat for the Indiana Bat, an applicant would need to address the parcel's exclusion from SSA on the basis that it is an environmentally sensitive area due to both the presence of wetlands and its identification as habitat for the Indiana Bat.

7. Comment: The commenter requests that the portions of Block 3801, Lot 2, and Block 3802, Lot 1, in Hanover Township, which were proposed for removal from SSA, remain included in SSA. The commenter states that the site is a brownfield and in the process of being remediated and that portions of the site proposed for removal from SSA are subject to remediation requirements and future redevelopment. Commenter further notes that the property owner did not receive notice of this amendment proposal. (9)

Response: A majority of Block 3801, Lot 2, and Block 3802, Lot 1, are included in the SSA. The portions of those parcels not included in SSA are either environmentally sensitive or open water and consistent with the WQM Planning rules at N.J.A.C. 7:15-5.24 were removed from SSA.

Regarding the commenter's note that the property owner did not receive notice of this amendment proposal, please see the Department's response to Comment 17.

8. Comment: The commenter asks whether steep slopes were removed from the SSA. (10)

Response: Steep slopes, in and of themselves, were not removed from SSA because they are not one of the environmentally sensitive features considered in the delineation of SSA at N.J.A.C. 7:15-5.24. However, the WQM Planning rules require that municipalities adopt ordinances that

prevent new disturbance for projects or activities on steep slopes as part of a complete county-wide WMP.

9. Comment: The commenters note that there are no maps that sufficiently depict the difference between areas currently served by sewers and those that may be served by sewer in the future, or specific information explaining why areas were removed from SSA. Commenter 14 recommended footnotes be added to the FWSA map indicating the underlying basis for removal of areas from SSA. (10, 11, 14)

Response: This amendment was prepared pursuant to P.L. 2011, c. 203, enacted on January 17, 2012, which requires the Wastewater Management Planning Agency to prepare and submit to the Department at least that portion of a WMP designating SSA, which complies with the Department's regulatory criteria. Morris County is continuing to develop a county-wide WMP that complies with the WQM Planning rules that, when adopted, is required to include maps that more clearly depict the difference between areas currently served by sewers and those that may be served by sewer in the future.

The adopted FWSA map does not explain which regulatory mapping criteria (i.e. wetlands threatened and endangered species etc.) was used as the basis for exclusion of specific areas from the proposed SSA. The mapping display is constrained by the actual amount of information included. Similarly, adding footnotes or other textual information associated with every location excluded or removed from the SSA would not be practical or desirable from a display standpoint. However, the Department notes that all of the GIS data utilized by the Department during this process is available for review and download on the Department's website (<http://www.nj.gov/dep/gis>). Further, pursuant to Administrative Order 2010-03, the Department will provide any property owner, upon written request, an explanation of the issues preventing the inclusion of a specific site in the proposed SSA. In addition, the Department and Morris County have provided at numerous meetings, and via numerous correspondence, similar information. In addition, the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing regulations require that full county-wide WMP updates be completed pursuant to

the requirements set forth in N.J.A.C. 7:15. A complete county-wide WMP is required to include mapping of all of the environmental resource criteria used as the basis for the SSA delineation.

10. Comment: The commenters object to the removal of open space properties from SSA. Commenter 12 requests that Block 123, Lots 19 & 20, Block 59.01, Lot 5, and Block 76, Lot 15.02, in the Township of Montville, recently acquired as open space, remain included in SSA. Commenter 15 objects to the removal of Block 9701, Lot 1.01, Block 5004, Lot 9, Block 4801, Lots 15 & 30, Block 5101, Lot 1, Block 4501, Lot 2.03, and Block 4101, Lot 3.01, in Morris Township. Commenter 15 states that there is a possibility of building restrooms on these areas at some point in time. (12, 15)

Response: The Department does not generally support the broad inclusion of preserved open space within SSA. The Department did specifically remove areas that were environmentally sensitive from SSA, consistent with the WQM Planning rules at N.J.A.C. 7:15-5.24. Additionally, the Department and Morris County made multiple requests to all municipalities and government agencies for all planned development in parks and open space so that they could be included in the SSA if they were constructed outside of all environmentally constrained areas. The point of including an area in SSA is to serve existing or planned development. As preserved open space is typically deed restricted to prevent development of a site beyond that necessary to support its intended recreational use, it is inappropriate to include entire parcels of preserved open space in SSA. Nevertheless, the Department will continue to work with counties and municipalities to identify appropriate, limited areas on preserved open space parcels that can be included in SSA through future WQM Plan amendments in order to provide the public with restrooms and other facilities to support the recreational use of the parcels.

The parcels in the Township of Montville were removed due to their environmental sensitivity, consistent with the WQM Planning rules at N.J.A.C. 7:15-5.24. The areas removed are identified as wetlands and habitat for threatened and endangered species.

Similarly, the parcels in Morris Township were all partially, if not completely, identified as environmentally sensitive, consistent with the WQM Planning rules at N.J.A.C. 7:15-5.24. The

areas removed are identified as habitat for threatened and endangered species, including the Indiana Bat which is federally protected.

11. Comment: The commenter notes that Block 101, Lot 3; Block 2704, Lot 6; Block 2007, Lot 1; Block 902, Lot 13; and Block 902, Lot 17, in Pequannock Township, are incorrectly mapped and should be included in the Two Bridges SSA . (13)

Response: The Department agrees that the parcels in question are currently served by Two Bridges SSA and were inadvertently, incorrectly identified as being served by the incorrect sewer system. The Department has determined that inclusion of these parcels in the SSA is a technical correction and has correctly identified the parcels as within the Two Bridges SSA in the adopted FWSA map.

12. Comment: The commenter states that the Morris County FWSA map should align with the criteria defining priority growth investment areas provided under the draft State Strategic Plan. (14)

Response: Neither P.L. 2011, c. 203, nor the WQM Planning rules require alignment with the State Planning Act, N.J.S.A. 52:18A-196 et seq., the adopted State Development and Redevelopment Plan (SDRP), or its proposed replacement, the draft State Strategic Plan. However, the Department will take necessary actions to support the State Strategic Plan upon adoption and seek to integrate the SDRP, regional, and local land use plans, consistent with the WQM Planning rules. Upon adoption of the State Strategic Plan, the Department will work to establish a clear connection between Strategic Plan-identified "Investment Area" criteria and the WQM planning process. Further, the WQM Planning rules allow for the inclusion of SSA in environmentally sensitive areas provided it is designed to accommodate center based development and is an element of an endorsed plan approved by the State Planning Commission, in certain circumstances, at N.J.A.C. 7:15-5.24(h).

13. Comment: The commenter encourages a formal "Memorandum of Understanding" be executed between the Department and the Highlands Council establishing respective

responsibilities and timeframes despite the cooperative manner in which the process is taking place so far. (14)

Response: Municipalities located in the Highlands Planning and/or Preservation Area, as delineated in the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et. seq., that are conforming to the Highlands RMP developed and adopted by the Highlands Council, are cooperatively developing a municipal chapter of the Morris County WMP with the Highlands Council consistent with the Highlands Council Plan Conformance Process. All municipal chapters must meet the minimum requirements of P.L. 2011, c. 203, and the WQM Planning rules (N.J.A.C. 7:15). Such a municipal chapter may only be submitted to the Department by the applicable wastewater management planning agency, which in this case is the Morris County Board of Chosen Freeholders. The Department does not believe that a Memorandum of Understanding with the Highlands Council to address the development of WMPs is necessary.

14. Comment: The commenter asserts that the reliance on existing Department Geographical Information Systems (GIS) mapping data is not reliable and therefore requires extensive field verifications. (14)

Response: The Department believes that the use of GIS is not only the most accessible approach for wastewater management planning agencies but is also appropriate for the scale of planning required in the Water Quality Management Planning rules at N.J.A.C. 7:15. Because GIS coverages are readily available, have a high degree of accuracy, and can be viewed at various scales, they provide a means to simplify the wastewater management plan development process that will help ensure plans are developed, kept up to date, and serve the purpose for which they were intended. More detailed, or site by site analysis, is more appropriate for regulatory programs (that is, site plan review, or land use permitting) and is infeasible at a planning level. However, it was recognized by the Department from the beginning of the WMP development process that the Department's existing GIS data utilized to create the first draft of proposed SSA required some verification and "ground truthing" by the WMP agencies. Accordingly, each WMP agency participating in this planning process was contacted by the Department via written correspondence that included a first draft of the proposed SSA. This correspondence noted that

the SSA map provided was intended as the starting point from which the County should begin discussions with the municipalities to refine the draft SSA. Where new, more accurate information is available to local entities regarding development, wastewater management planning agencies are encouraged to use it to enhance the GIS data layers the Department provides on its website. Changes based on existing land use/construction since 2002 and approved (having obtained local and wastewater approvals) but not yet constructed projects were a particular focus of the process. In addition, numerous site-specific analyses, including Freshwater Wetlands (FWW) Letter of Interpretations, HSDs, and FWW and Flood Hazard Area permits were utilized to further modify the draft SSA. As such, development of the SSA did indeed result in extensive field verification, which validates the SSA delineation included in this amendment.

15. Comment: The commenter questions the use of wetlands GIS delineation and accuracy as part of the WQM Planning process. (16)

Response: The Department refers the commenter to the Department's response to comment 14 above concerning the use of GIS data in the WQM planning process. With regard specifically to the use of wetlands GIS delineation, the Department agrees with the commenter that there is some inaccuracy in the GIS mapping of freshwater wetlands. However, the Department is satisfied that accuracy of the mapping is sufficient for planning purposes. When more accurate site specific information is provided, for example a Letter of Interpretation in accordance with N.J.A.C. 7:15-5.24(e), a modification of the SSA boundary may be granted.

16. Comment: The commenter notes that while the Morris County FWSA map includes names of municipalities, parcel boundaries, and some street names, it is difficult for property owners to determine if they are impacted by the proposed mapping changes. (14)

Response: As the commenter notes, the Morris County FWSA map includes the names of municipalities, parcel boundaries, and some street names. It is the Department's experience that, as displayed, this available information is sufficient for locating specific properties. The Department and Morris County sought to provide a balance of graphic and textual information to

preserve the ability to adequately view the proposed FWSA boundaries, which are the focus of the FWSA map.

17. Comment: The commenters are concerned that there was a lack of transparency during the preparation of this amendment and express disappointment that property owners that were affected by the mapping procedures were not individually notified. (14, 15, 16)

Response: The Department and Morris County have pursued an open and extensive public review process beyond the minimal requirements of the WQM Planning rules. The Department and Morris County have held numerous meetings with the public, municipal officials, and affected agencies over the past four years. Further, in accordance with Administrative Order No. 2010-03 (AO #2010-3) signed by Commissioner Martin, a public meeting was held on February 9, 2011, to allow public review and comment on the then-current draft of Morris County SSA, the notice of which was published in the New Jersey Register, the Star Ledger and the Daily Record at least 30 days prior to the meeting. As a result, the Department and the County have received continuous input from residents, municipal officials, and other affected agencies regarding mapping corrections and other issues.

As required by the WQM Planning rules, and as stated above, notice of this amendment was published in the New Jersey Register, the Star Ledger and the Daily Record beginning a 45 day public comment period, which included a public hearing held on August 13, 2012. The Department notes that notice of every individual property impacted by this amendment is not required by the WQM Planning rules. Further, any party may submit an application to the Department for a site specific amendment or revision, as applicable, to the WQM Plan to include or exclude additional areas and/or facilities in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable.

18. Comment: The commenter asserts that the SSA mapping on the Department's website differs from that adopted in the 2006 Morris Township WMP. (15)

Response: If the currently adopted SSA mapping depicted on the Department's website differs from that which was formally adopted in the 2006 Morris Township WMP, it was either a mapping error or is the result of a formal site specific amendment or revision to the WMP adopted pursuant to the WQM Planning rules. No deliberate change to the adopted SSA affecting Morris Township was made without proceeding through the formal adoption process.

Adoption of this amendment officially modifies the SSA adopted in the 2006 Morris Township WMP. All future modifications to the SSA shall be reviewed and notice provided in accordance with P.L. 2011, c. 203, and the WQM Planning rules at N.J.A.C. 7:15.

19. Comment: The commenter would like to know who the official source and keeper of WMP mapping is. (15)

Response: As the wastewater management planning agency for Morris County, the Morris County Board of Chosen Freeholders is the "official source" of the FWSA map. However, the Department and the Morris County Planning Department worked cooperatively to develop the amendment pursuant to the WQM Planning rules and P.L. 2011, c. 203. The Department and Morris County will both maintain paper copies of the adopted maps. The Department also maintains the currently approved SSA for the entire State available for download at <http://www.nj.gov/dep/gis/listall.html>.

20. Comment: The commenter asks if there is an appeal process to address disagreements on the exclusion of individual properties from SSA. (15)

Response: While the Department cannot provide legal advice, should the commenter disagree with the exclusion of individual properties from SSA in the adopted map, the commenter may submit an application to the Department for a site specific amendment or revision, as applicable, to the appropriate WQM plan to include the areas and/or facilities in SSA in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable. As discussed above, in accordance with N.J.A.C. 7:15-5.24, the Department will assess environmentally sensitive areas to determine what areas must be excluded from SSA. Areas requested to be included in SSA by an applicant

that must be excluded under the Water Quality Management Planning rules at N.J.A.C. 7:15-5.24 will not be included in SSA, except as provided under N.J.A.C. 7:15-5.24(e) through (h). Pursuant to N.J.A.C. 7:15-3.9, an applicant or designated planning agency may request an adjudicatory hearing to contest certain Department decisions on an application for a WQM plan amendment or revision.

In addition, Morris County is continuing to work on the county-wide WMP, and the commenter is encouraged to work with the County prior to the proposal of the WMP to request that the County include in the proposed WMP, areas in SSA that the commenter believes should be included in SSA and which can be included in SSA pursuant to the Water Quality Management Planning rules.

21. Comment: The commenters question the use, availability, validity, accuracy and transparency of the Department's Landscape Project. (14, 15, 16)

Response: The Landscape project is science based, has been peer-reviewed and publicly published and therefore is considered by the Department to be appropriate for use in the implementation of the WQM Planning rules and other rules. Additionally, there have been multiple legal decisions regarding the acceptable use of the Landscape Project by the Department and they can be found at In re Adoption of N.J.A.C. 7:15-5.24(b) and N.J.A.C. 7:15-5.25(e), 420 N.J. Super. 552 (App. Div.), certif. denied, 208 N.J. 597 (2011), ZRB LLC v. NJ Dep't of Environmental Protection, 403 N.J. Super. 531 (App. Div. 2008); In re Adopted Amendments to N.J.A.C. 7:7A-2.24, 365 N.J. Super. 255 (App. Div. 2003).

Despite the fact that the Landscape maps have been regularly updated and will continue to be amended periodically, the Department recognizes that the Landscape Project maps represent a snapshot in time and that subsequent alterations to the landscape may have occurred that affect the suitability of species habitat. As such, the rule provides multiple avenues to include environmentally sensitive areas in SSA, in particular at N.J.A.C. 7:15-5.26, which establishes a Habitat Suitability Determination providing applicants with the ability to rebut the presumption

of habitat in an area where it can be demonstrated that the area, through legal alteration, is no longer suitable habitat for the relevant endangered or threatened species.

22. Comment: The commenter requests that Block 5401, Lot 1, be included in SSA as it is already developed and that Block 5401, Lot 2, be included in SSA although development is limited due to steep slope restrictions. (15)

Response: The developed portion of Block 5401, Lot 1, is included in SSA. The remainder of Block 5401, Lot 1, and Block 5401, Lot 2, is identified as environmentally sensitive, and, as such, has been excluded from SSA consistent with the WQM Planning rules at N.J.A.C. 7:15-5.24. The areas removed are identified as habitat for threatened and endangered species, including the Indiana Bat which is federally protected.

23. Comment: The commenters question the impact of the SSA modifications as part of this amendment on NJ Pollution Discharge Elimination System (NJPDES) facilities that are responsible for the treatment of wastewater and if their current permit limits will be affected. (15, 16)

Response: No NJPDES regulated facility will have its permitted flow reduced as part of this FWSA amendment. However, Morris County is continuing to work on the county-wide WMP, that, when adopted, will include an ultimate build out for all NJPDES permitted facilities in Morris County based on SSA and zoning.

24. Comment: The commenter stated that different versions of the Landscape Project were utilized in preparing the FWSA map. (16)

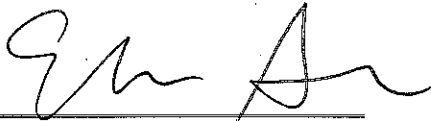
Response: The Department utilized Version 2.1 and Version 3.0, as appropriate considering their geographic extent, for the development of the FWSA map as it was the best available data at the time. Version 3.0 of the Landscape Project covered the Highlands Region and associated habitat patches extended to major geographic breaks, such as county roads. Version 2.1 of the Landscape Project covered all portions of New Jersey not covered by Version 3.0.

25. Comment: The commenter notes that portions of Block 6801, Lot 4, the site of the Hanover Sewerage Authority treatment plant in Hanover Township are not included in SSA even though structures such as piping, fencing and a conveyance channel are located in the area. (16)

Response: SSA identifies those areas appropriate for development of sewage generating structures. As the facilities in question do not generate sewage, it is unnecessary for them to be included in SSA. The Department notes that the entirety of the existing treatment plant is included in SSA. Only those areas identified as environmentally sensitive have been excluded, consistent with the WQM Planning rules at N.J.A.C. 7:15-5.24. The areas removed are identified as wetlands and habitat for threatened and endangered species.

Adoption of these amendments does not eliminate the need for any permits, approvals, or certifications required by any Federal, State, county, or municipal review agency with jurisdiction over any project/activity. Approval of these amendments does not provide any implied approval for any other aspects of any project or needed permits and approvals. Further, the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15.

The adopted map is available at the Department, Division of Coastal and Land Use Planning, 401 East State Street, Trenton, New Jersey, 08625.



Elizabeth Semple, Manager
Division of Coastal and Land Use Planning
Department of Environmental Protection

4/25/13

Date