

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES MANAGEMENT COORDINATION**

Adopted Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that on **JAN 15 2016**, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Quality Management Planning rules, N.J.A.C. 7:15, and Public Law (P.L.) 2011, c.203, as amended and supplemented by P.L. 2013, c.188, the Department of Environmental Protection (Department) adopted an amendment to the Lower Delaware Water Quality Management (WQM) Plan. This amendment, submitted by the Cumberland County Department of Planning and Development on behalf of the Cumberland County Board of Chosen Freeholders as the responsible wastewater management planning agency, adopts a future wastewater service area (FWSA) map for Cumberland County, except for the City of Millville, as part of the Cumberland County Wastewater Management Plan (WMP). This map was prepared pursuant to P.L. 2011, c.203, as amended and supplemented by P.L. 2013, c.188, which permits the wastewater management planning agency to prepare and submit to the Department at least that portion of a WMP designating sewer service area (SSA), which shall comply with the Department's regulatory criteria. This map, titled "Future Wastewater Service Areas, Cumberland County WMP, Amending the Lower Delaware Water Quality Management Plan" supersedes all wastewater service area mapping currently contained in the Lower Delaware

WQM Plan for areas within Cumberland County, except for the City of Millville, which shall remain unchanged from what is currently identified as wastewater service area in the Lower Delaware WQM Plan.

The adopted FWSA map identifies areas to be served by sewage treatment facilities/sewer systems as well as areas to be served by individual subsurface sewage disposal systems (also known as septic systems) with design flows of equal to or less than 2,000 gallons per day (gpd). The map modifies the previously approved SSAs to exclude environmentally sensitive areas (ESAs) that are not currently connected to sewer systems. Additionally, the map removes some areas from sewer service and also includes new areas as SSA based on local planning objectives. This amendment only modifies the wastewater service area mapping portions of the above referenced WQM Plan.

In accordance with N.J.A.C. 7:15-5.24, environmentally sensitive areas (ESAs) were assessed to determine what areas are appropriate for inclusion in the SSA. ESAs are defined based on a composite geographic information systems (GIS) analysis, as any contiguous area of 25 acres or larger consisting of habitat for threatened and endangered 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. ESAs are required to be excluded from the SSA except as provided in accordance with N.J.A.C. 7:15-5.24(e)-(h).

In accordance with N.J.A.C. 7:15-5.24(b)1, to determine areas designated as threatened or endangered species habitat, the Department utilized the Division of Fish and Wildlife's Landscape

Project Maps of Habitat for Endangered, Threatened or Other Priority Species, version 2.1 (Landscape Project). Areas identified by the Landscape Project as being suitable habitat for threatened and endangered species Ranks 3, (State threatened), 4 (State endangered), and 5 (Federal endangered or threatened) are not included in SSAs except as provided under N.J.A.C. 7:15-5.24(e)-(h), or unless a site has undergone a site specific Habitat Suitability Determination prepared in accordance with N.J.A.C. 7:15-5.26 that found the site to be not suitable habitat, or, pursuant to N.J.A.C. 7:15-5.24(g)2, the Department determined the ESAs are not critical to a population of endangered or threatened species the loss of which would decrease the likelihood of the survival or recovery of the identified species.

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)-(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)-(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 and their tributaries are afforded a 300-foot buffer. In addition, as required under N.J.A.C. 7:15-5.20(b)3, the 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 Stormwater Management rules (N.J.A.C. 7:38), and the Water Quality Management 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 wetland 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)-(h).

In accordance with N.J.A.C. 7:15-5.24(c), lands with certain coastal planning areas (Coastal Fringe, Coastal Rural, and Coastal Environmentally Sensitive Planning Areas) are not included in the adopted SSA. There are some exceptions to the inclusion of coastal planning areas in SSA including areas previously designated as SSA where wastewater collection infrastructure currently exists and where sewage producing structures are connected to the system remain in the SSA. In previously designated SSA, the SSA designation remains in limited instances where the lots are considered infill development or to remove undulations in the FWSA boundary as necessary to create a linear boundary that relates to recognizable geographic features in accordance with N.J.A.C. 7:15-5.20(b)2. In addition, approximately 780 acres of Coastal Rural Planning Area in Hopewell Township are being included in the FWSA because of the Township's participation in the plan endorsement process. Hopewell Township began the plan endorsement process in 2008 with the intent of establishing a transfer of development rights (TDR) program. The TDR program would protect agricultural lands in the environs of the Township by transferring development rights from farmland and concentrating development potential and density to this

area of Hopewell adjacent to existing sewer and water infrastructure in Hopewell Township. The Department supports Hopewell's efforts and will continue to work with them.

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 ESAs, are unaffected by adoption of this amendment and compliance is required.

In accordance with N.J.A.C. 7:15-5.24(e)-(h), limited ESAs have been included in SSAs. Where applicable, Department wetland, flood hazard, and state open water permits or jurisdictional determinations were utilized to determine the extent of the SSA on individual lots.

In accordance with P.L. 2011, c.203, as amended and supplemented by P.L. 2013, c.188, 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 modification. Therefore, amendments to modify a SSA may be approved if such actions are compliant with the applicable sections of the Water Quality Management Planning rules (N.J.A.C. 7:15) regardless of whether capacity has been fully assessed. Hence,

projected wastewater flows from SSAs have not been evaluated. Additional issues which may need to be addressed for any new or expanded wastewater treatment facility proposal include, but are not limited to, the following: 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.

In recognition of the nature and scope of the New Jersey Pinelands Commission's (Commission) regulation and oversight of land use and development within the Pinelands Area, and for purposes of implementing the Department's WQM Planning rules at N.J.A.C. 7:15, a Memorandum of Understanding (MOU) between the Department and the Commission was executed in which the Department recognizes the management area designations and boundaries established by the Commission within the Pinelands Area. The MOU provides that all lands located within a Pinelands Village, Pinelands Town, Regional Growth Area, substantially developed portions of a Military and Federal Installation Area, and any other area designated by the Commission for the development of centralized waste water treatment and collection facilities pursuant to either N.J.A.C. 7:50-6.84(a)2 to address a public health problem or a memorandum of agreement pursuant to N.J.A.C. 7:50-4.52(c) of the Comprehensive Master Plan (CMP), as specified in geographic information system (GIS) coverage provided by the Pinelands Commission, shall be deemed to be within a SSA. Such areas, included in SSA pursuant to the MOU, may include ESAs as described in N.J.A.C. 7:15-5.24(b). Pursuant to the MOU, the Department has not excluded ESAs delineated at N.J.A.C. 7:15-5.24(b) within a Pinelands Village, Pinelands Town,

Regional Growth Area, or substantially developed portions of a Military and Federal Installation Area, from SSA on the adopted map.

This notice represents the Department's determination that the County's proposed SSA, minus the City of Millville, is in compliance with the regulatory criteria for identifying SSAs pursuant to N.J.A.C. 7:15-5.24 and 5.25.

The Department and Cumberland 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 DEP Commissioner Martin, a public meeting was held on March 31, 2011, to allow public review and comment on the then-current draft of Cumberland County FWSA. As a result, the Department and the County received continuous input from residents, municipal officials, and other affected agencies regarding mapping corrections and other issues.

The notice of this amendment proposal was published in the New Jersey Register on November 5, 2012, at 44 N.J.R. 2911(a). A public hearing was held on December 11, 2012, at the Cumberland County Extension 4H Center. The public comment period ended on December 26, 2012. The following individuals with associated affiliation submitted comments on the adopted part of this amendment:

1. Suzanne McCarthy, South Jersey Land & Water Trust
2. Jane Galletto, Citizens United to Protect the Maurice River and Its Tributaries

3. Jody Carrara, Association of New Jersey Environmental Commissions
4. Blake Maloney, Cohansey Area Watershed Association
5. Michael Fernandez, Cumberland County Utilities Authority (CCUA)
6. South Jersey Bayshore Coalition (SJBC) – represented by Cheryl Reardon, Sandy Batty, Kelly Mooij, Francis Rapa, Tim Dillingham, Christine Nolan, Jane Galetto, Cynthia Zirkle, Carleton Montgomery, and Richard H. McNutt
7. Timothy Touhey, New Jersey Builders Association

The Department received additional comments regarding several proposed SSA modifications within the City of Millville. Comments were received both in support of and not in support of removing SSA designation on several parcels for varying reasons. Upon review of the comments requesting to modify the FWSA map, the Department determined that it is premature to amend the FWSA Map for the City of Millville at this time until local issues regarding the sewerability of each controversial parcel can be resolved. Therefore, the Department is not adopting a new FWSA Map for Millville and all areas in the City of Millville will retain the sewer service area designation currently identified within the Lower Delaware WQMP. However, the Cumberland County Department of Planning and Development spent a significant amount of time and resources creating a FWSA Map for Cumberland County and the Department does not want to see these efforts wasted. Thus, the Department is adopting the rest of the Cumberland County FWSA Map which is in conformance with the Water Quality Management Planning rules, N.J.A.C. 7:15, and P.L. 2011, c.203 as amended and supplemented by P.L. 2013, c.188.

Comments on the FWSA Map, except for those within the City of Millville, 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 that 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.

The submitted comments on the adopted portions of this amendment and the Department's responses are summarized below. The number(s) in parentheses after each comment correspond to the respective commenter listed above.

1. Comment: The commenters represent environmental organizations concerned about mapping of SSAs and the impacts on the natural resources of the Delaware Bayshore region. The commenters request that the Department follow the Water Quality Management Planning Rules, N.J.A.C 7:15, in approving amendments to the Lower Delaware Water Quality Management Plan.
(1, 2 and 3)

Response: The Department acknowledges the concern expressed in the comments made by the commenters and in making final determinations regarding SSA delineation, had complied with all applicable regulations concerning amendments to the Lower Delaware WQM Plan. This includes Section 4 of P.L. 2011, c.203, as amended and supplemented by P.L. 2013, c.188, which specifically made provisions for a 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 shall comply with the Department's regulatory criteria. The Department anticipates that further review of the SSA will occur when Cumberland County submits the required complete WMP document for the County that addresses additional issues such as build-out for the Delaware Bayshore region.

2. Comment: The commenter requests that the SSA be removed from the Pinelands Region in Maurice River Township. The land included in SSA has one-acre zoning, which was adopted with the intention of avoiding dense centers. Bringing sewer service to this area will increase the likelihood of dense development. (3)

3. Comment: The commenter is concerned that areas in Maurice River Township have been included in SSA that have no existing or long-term need for sewer or some type of wastewater management. (5)

4. Comment: The commenter opposes including all Pineland Villages in the Cumberland County FWSA and states that neither the Pinelands nor the Department regulations include such a

requirement; therefore, the two agencies cannot impose such a requirement on third-parties via an agreement between them. (1, 2, 3, 4 and 6)

Response to Comments 2 through 4: The Department and the Commission entered into an MOU to effectuate coordination between the agencies regarding sewer service area delineation in the "Pinelands Area" as defined by N.J.S.A. 13:18A-11. As part of the Continuing Planning Process (CPP) required by the Water Quality Planning Act, N.J.S.A. 58:11A-7, the Department is required to integrate and unify the statewide and areawide water quality management planning processes and is required to coordinate and integrate the CPP with related Federal, State, regional and local comprehensive, functional and other relevant planning activities, programs and policies. The Commission, is the planning entity authorized in Section 502 of the "National Parks and Recreation Act of 1979," and is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act, N.J.S.A 13:18A-1 et seq. (PPA), charged with implementing the requirements of the PPA, which include establishing minimum standards for the development and the use of land in the Pinelands Area. The Department is authorized pursuant to N.J.S.A. 13:1D-9(q) to contract with any other public agency. The Commission is authorized by N.J.S.A. 13:18A-6g to enter into agreements or contracts.

The Commission regulates land use and development intensity and exercises development review authority over all development to be located within the Pinelands Area. In accordance with the PPA, N.J.S.A. 13:18A-8 and the Federal Act, 16 U.S.C. 471i(f), the Commission developed a comprehensive statement of policies for planning and managing development and land use in the Pinelands Area known as the Pinelands Comprehensive Management Plan, (the CMP), which

includes land use and development intensity standards for various management areas, as well as site specific development standards.

The Commission is charged under the PPA to determine the amount of human development and activity certain ecosystems within the Pinelands Area can sustain, while still maintaining overall ecological values thereof, with special reference to ground and surface water quality and endangered, unique and unusual plant and animals and biotic communities. (N.J.S.A. 13:18A-8(a)(1)). Further, the PPA requires the CMP to include a land use capability map and statements of policies for planning and managing development and land use which must consider a variety of land and water protection and management techniques, and regulate the use of land and water resources, among other things. The Commission distinguishes between nine management areas, eight established by N.J.A.C. 7:50-5.11 et seq., with Pinelands Villages and Towns treated as two separate management areas and displayed that way on the Pinelands Land Capability Map. Each management area is subject to different minimum standards for land use distribution and densities. (N.J.A.C. 7:50-5.21 et seq.) As such, the Commission has determined that certain areas are more compatible with growth and development than others.

Notably, the PPA also specifically requires the CMP to include: "in conjunction with existing State programs and planning processes, a plan to implement the provisions of the 'Clean Water Act' (P.L. 95-217) and the 'Safe Drinking Water Act' (P.L. 93-523) which pertain to the surface and ground water quality of the Pinelands National Reserve." (N.J.S.A. 13:18A-8(j)). The water quality portions of the CMP, N.J.A.C. 7:50-6.81-6.8, are "intended to protect and preserve surface and ground waters of the Pinelands and to ensure that random and uncontrolled growth and

development will not degrade the Pinelands environment." (N.J.A.C. 7:50-6.81.) N.J.A.C. 7:15-3.7 of the WQM Planning Rules specifically requires the Department to coordinate with the Commission and requires the Department to obtain Commission comment in order to ensure WQM amendments are consistent with the intent and programs of the Pinelands Protection Act. N.J.S.A. 13:18A-8 of the PPA also requires coordination and consistency with local, State, and Federal programs and policies in order to promote the goals and policies of the management plan.

The CMP is "designed to promote orderly development of the Pinelands so as to preserve and protect the significant and unique natural, ecological, agricultural, archaeological, historical, scenic, cultural, and recreational resources of the Pinelands." (N.J.A.C. 7:50-1.3. See also N.J.S.A. 13:18A-9).

Further, N.J.S.A. 13:18A-27 provides that in the event of any conflict or inconsistency between the provisions of the Pinelands Protection Act and any rules and regulations promulgated under the PPA, which includes the CMP, the provisions of the PPA and CMP shall be enforced and the conflicting or inconsistent provisions shall have no force and effect. (See also N.J.S.A. 13:18A-10(c) (prohibiting any State approval, certificate, license, consent, permit or financial assistance authorizing development unless it conforms to the CMP)).

In light of the above, and in recognition of the nature and scope of the Commission's planning, regulation and oversight of land use and development in the Pinelands Area and for purposes of implementing the Water Quality Management Planning Rules, N.J.A.C. 7:15, a MOU between the Department and the Commission was executed in April 2012 in which the Department recognizes

the management area designations and boundaries established by the Commission within the Pinelands Area for purposes of delineating SSA. The MOU provides that all lands located within a Pinelands Village, Pinelands Town, Regional Growth Area, substantially developed portions of a Military and Federal Installation Area, and any other area designated by the Commission for the development of centralized waste water treatment and collection facilities pursuant to either N.J.A.C. 7:50-6.84(a)2 to address a public health problem or a memorandum of agreement pursuant to N.J.A.C. 7:50-4.52(c) of the CMP, as specified in GIS coverage provided by the Commission, shall be deemed to be within a SSA.

The MOU is an agreement between two State agencies, the Department and the Commission, intended to facilitate procedural aspects between the two agencies for WQM planning purposes. The CMP allows for the installation of sewers in Pinelands Villages, but does not require it. (See N.J.A.C. 7:50-5.27). Consistent with the CMP, the Department is adopting a FWSA in accordance with the MOU, which identifies Pinelands Villages in Maurice River Township as within SSA. Like the CMP, the designation of the Pinelands Villages as within SSA provides the opportunity for sewers, but does not require or guarantee that sewers or a sewage collection system will be developed. The CMP identifies Pinelands Villages and Towns as "appropriate for infill, residential, commercial and industrial development that is compatible with their existing character." (N.J.A.C. 7:50-5.13(f)). The decision to provide public sanitary sewer service to Pinelands Villages lies within the discretion and authority of each Pinelands municipality that has a Pinelands Village, subject to compliance with the CMP. The designation of SSA in the Pinelands Villages enables those municipalities to explore the option of constructing sewerage infrastructure and/or a sewage collection system, including package treatment plants. Also

included in the SSA are the following NJDPES permitted sites as identified on the Cumberland County FWSA map: Captain Klein Boat Rental and Camp, The Villages, NJDOT Maurice River Yard, Saltwinder Multani/Texaco & Country Store, Port Elizabeth School, and Bayside State Prison.

The Department defers to the Pinelands Commission concerning the administration of the CMP and its substantive regulations with regard to the extension of sewage collection infrastructure, but notes that any new discharge of treated wastewater to ground or surface water cannot occur until a demonstration of compliance with the Department's NJPDES and Treatment Works regulations has been made and all necessary and applicable permits are issued. The designation of SSA does not guarantee the provision of sanitary sewer service to an area as any new or expanded wastewater treatment facility proposal must demonstrate compliance, with State ground or surface water quality antidegradation effluent limitations, stormwater regulations, and the site specific design and function of any proposed wastewater treatment works.

Additionally, any proposed development of wastewater treatment works in the Pinelands is subject to the review and approval of the Pinelands Commission in accordance with the provisions of the CMP. And, should a municipality wish to increase permitted residential densities or the permitted intensity of non-residential development in their Pinelands Village zoning districts, such changes would require Commission review and approval to ensure that the zoning plan in the Pinelands Village is consistent with the CMP. The Department recognizes that pursuant to the CMP, a Pinelands Village zoning plan may not provide for an additional increment of development which is greater than the number of principal structures which existed in the Village in 1979. (N.J.A.C.

7:50-5.16). The designation of Pinelands Villages within a FWSA enables municipalities to exercise the option of seeking to provide sewerage infrastructure, authorized by a CMP-consistent zoning change if necessary, or choosing to maintain the existing Commission certified zoning districts within their Pinelands Villages that would not necessitate the provision of the sewer service.

5. Comment: The commenter asserts that the area in Upper Deerfield Township at the headwaters of Sunset Lake, ahead of the Bridgeton City Park, has a 100 acre parcel that was previously removed from the SSA, but then included. The commenter requests that the site, located on Block 1601, Lots 1, 2, and 5 and Block 1701, Lot 12, continue to be removed from the SSA. (4)

6. Comment: The commenters believe the forested parcels at Block 1601, Lots 1, 2, and 5, and Block 1701, Lot 12, in Upper Deerfield Township, which have received local approvals to build 374 homes, should be excluded from the FWSA based on potential water quality impairments to Sunset Lake and for the protection of critical habitat for threatened and endangered species. (1, 2, 3 and 6)

Response: This site was removed from the original draft SSA mapping due to ESAs identified to the Department at the public information meeting on March 31, 2011 as mandated by Administrative Order (AO) 2012-03. However, in compliance with AO 2010-03, the developer of this site requested an explanation of the status of SSA delineation and requested inclusion of the property into the SSA. The Department's August 2, 2011 letter to the developer acknowledged

that the proposed residential development of Block 1601, Lots 1, 2, and 5 and Block 1701, Lot 12, named "The Reserve at Sunset Lake" received Department issued Treatment Works Approval (TWA) #05-0776, issued on December 21, 2005. TWA #05-0776 was set to expire on December 20, 2007; however, the Permit Extension Act (PEA) of 2008 (P.L. 2008, c. 78) extended the expiration of the approval to June 30, 2013. Additionally, the PEA of 2014 has now extended the expiration of the approval to June 30, 2016. The PEA does not allow extension of the TWA expiration date for areas within the Environmentally Sensitive, or PA 5, State Planning Area; therefore, the areas of said lots identified as PA 5, adjacent to Sunset Lake, were not allowed inclusion into the SSA. The County has adjusted the FWSA delineation to include this property based upon this determination by the Department.

7. Comment: The commenter views this amendment as both identifying existing SSA as well as identifying where sewer infrastructure is needed in the future to both accommodate growth outside of ESAs as well as to target areas that have existing problems that are negatively impacting the environment, specifically areas such as Fortescue, Port Norris, and Laurel Lake. These areas have long been identified by both the CCUA and the County as having severe wastewater management problems that need to be addressed and are completely ignored in this plan. The commenter does not suggest a service line being run from some larger facility such as CCUA or Millville, but that Fortesque, Port Norris, and Laurel Lake need to be identified as a service area perhaps for some greater innovative type of treatment system. The commenter believes these areas need to be identified now so that in the future, should they get to the point where they want to proceed, they can do so without spending extra time and expense to get the necessary approvals.

The commenter also requests that the Village of Fairton in Fairfield Township remain included in the SSA, as the CCUA proposed to the County. The commenter argues for the inclusion of Fairton in SSA on the basis that the village contains small lots, primarily on cesspools, which under the new septic regulations are not acceptable, and if someone were to try to sell in Fairton on a cesspool, they could not sell without a new septic system, which likely could not be constructed to the current standards. (5)

Response: The Village of Fairton is located entirely within the CAFRA regulated area designated as a Coastal Rural Planning Area, while Port Norris and Fortesque are within Coastal Environmentally Sensitive Areas. In accordance with N.J.A.C. 7:15-5.24(c), these areas, which do not have any current sewer infrastructure and are not adjacent to current sewer infrastructure, were not included in the SSA. It is likely that these areas may need some sort of regional wastewater treatment solution in the future, but based on the current Water Quality Management Planning rules, there are no provisions which allow development within these coastal designations to be identified as SSA. Since only a FWSA Map was proposed, no detailed evaluations, which would have been required by a complete WMP, were conducted. The Department has proposed new Water Quality Management Planning rules, which if adopted, would allow for a re-evaluation of these areas to be considered for inclusion in SSA. Cumberland County will be required to provide a new complete WMP within one year of adoption of the new rules or the Department will have the authority to complete a WMP for this area. The Department anticipates that the complete WMP process under the amended rules will provide an opportunity to re-evaluate the potential identification of these areas as FWSA.

For areas discharging to cesspools to be considered as future SSA, the Department will accept verification and documentation from the County or local Health Department demonstrating that a new septic system can or cannot be constructed to current standards, or, for existing failing septic systems, verification and documentation that the septic systems are in fact malfunctioning, not as a result of lack of system maintenance. Other pertinent information may include the percentage of failure and whether or not the septic systems can be repaired on-site. This information is considered based on N.J.A.C. 7:15-4.2, which deems certain activities consistent with the WQMP including, treatment works whose sole purpose is to abate an existing pollution problem, if such treatment works are required by the Department, the local or county board of health, or the USEPA.

Laurel Lake, which is currently served by individual septic systems, does not currently contain ESAs, and was not proposed as FWSA by the County. The inclusion of new SSA as part of the adoption of the FWSA map 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. However, as explained above for other properties that were not included within the FWSA, inclusion of this area in a FWSA can be re-evaluated as part up the anticipated Cumberland County WMP development.

8. Comment: The commenter asserts that the Bridgeton City Park has been removed from SSA when there already is existing service there. Should the city want to add a bathroom for some reason in the future this would prohibit them from doing that without a lengthy amendment process. The commenter finds this to be counterproductive. (5)

Response: The Landscape Project version 2.1 identifies Bald Eagle Foraging as well as Rank 4 Barred Owl Habitat at Bridgeton City Park. Existing building footprints, which are currently served by sewer, are included in the SSA, while areas identified by the Landscape Project as being suitable habitat for threatened and endangered species are not included. Should a governmental entity wish to propose an additional restroom facility at the City Park that is not located within the FWSA, the entity can review the impact the proposed facilities on the habitat for threatened and endangered species and if the proposal can meet the requirements of N.J.A.C. 7:15-5.24(e) or (g), as applicable, propose an amendment to include the facility in the SSA in the future.

9. Comment: The commenter wants the Department to use the most recent version of its Landscape Project data, version 3.1, to determine critical wildlife habitat areas that should be excluded from the SSA. (1, 2, 3, 4 and 6)

Response: Cumberland County's proposed FWSA map was submitted to the Department for review prior to the release of Landscape Project version 3.1. The Cumberland County Planning Department utilized the Landscape Project mapping available at the time, which was version 2.1, when completing the wastewater service area delineation. As noted in the proposal notice for this amendment, the Department utilized version 2.1 while reviewing this amendment. Consequently, areas identified as ESA only under version 2.1 have been excluded from SSA in accordance with N.J.A.C. 7:15-5.24 upon adoption of this amendment. As discussed in response to Comment 7 above, Cumberland County will be required to provide a new complete WMP within one year of adoption of new Water Quality Management Planning rules proposed by the Department or the

Department will have the authority to complete a WMP for this area. The Department anticipates that the complete WMP process under the amended rules, will provide an opportunity to re-evaluate endangered or threatened species habitat utilizing the most current Landscape Project version available at that time.

10. **Comment:** The commenters express concerns that the future growth which may accompany the proposed FWSA will result in overdrawn aquifers and stream and river flow depletion. The commenters indicate that the water supply analysis, which they submitted to the Department during the comment process for review, shows that the watersheds into which the County plans to expand SSA are all in deficit when the methods and criteria for the next New Jersey Statewide Water Supply Plan are employed. The commenters recommend that the proposed amendment not be approved until the Department employs N.J.A.C. 7:15-5.25(f), which states that the Department will only adopt a WMP, WMP update, or WMP amendment if water supply needs associated with the environmental build-out are demonstrated to be met with existing new or expanded water supplies that do not conflict with the most current New Jersey State Water Supply Plan, regional water supply plans, or TMDLs adopted as WQM plan amendments including, but not limited to, any limitations on withdrawals due to ecological and saltwater intrusion concerns. (1, 2, 3, 4 and 6)

Response: The Department has accepted the Cumberland County FWSA Map in accordance with Section 4 of P.L. 2011, c.203, as amended and supplemented by P.L. 2013, c.188, which permits the wastewater management planning agency to prepare and submit to the Department at least that portion of a WMP designating SSA, which shall comply with the Department's regulatory criteria.

Cumberland County will continue toward completion of the full required Cumberland County WMP pursuant to the requirements set forth in N.J.A.C. 7:15. The commenter has provided valuable information for consideration, which has been forwarded to the Department's Division of Water Supply to inform future discussions; however, to move forward with review of the submitted information, the County must complete a buildout analysis of the adopted FWSA. Until such time as the buildout of the FWSA is completed, the water supply analysis cannot be fully assessed. However, under the proposed new Water Quality Management Planning rules, the Department is no longer going to require a water supply analysis as part of a wastewater management plan. See the Water Quality Management Planning rule proposal at 47 N.J.R. 2531(a) for a complete description.

11. Comment: The commenter questions the Department's reliance on its existing GIS mapping data related to the location of freshwater wetlands, species habitat and stream buffer locations. (7)

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 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). 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 was available to local entities regarding development, wastewater management planning agencies were 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.

12. Comment: The commenter feels it may be difficult for property owners to easily determine whether their property has been impacted by the proposed mapping changes, given the absence of municipal maps. (7)

Response: Although the resulting adopted FWSA map does not include local street names, it does identify the names of municipalities; tax parcels lines, county roads, and major State and Federal highways. It is the Department’s experience that, as displayed, this available information is sufficient for locating specific properties. As the proposed FWSA boundaries were the focus of

the FWSA map, the intent was to provide a balance of graphic and textual information to preserve the ability to adequately view the proposed FWSA boundaries.

13. Comment: The FWSA map does not provide enough detail or justification as to why different areas/properties are proposed to be eliminated from or added to the existing SSA. Cumberland County and the Department must provide sufficient information on these maps for affected property owners and other interested parties to be able to understand why particular parcels have been removed or added to the proposed SSA. The commenter recommends the use of footnotes that indicate the underlying basis for removal of areas. (7)

Response: As indicated by the commenter, the proposed FWSA map does not include footnotes explaining 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. As noted above, 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. 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 (AO #2010-3), 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 Cumberland County have provided at numerous meetings, and via numerous correspondence, similar information. 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.

14. Comment: Cumberland County should have provided a map of existing SSAs on the FWSA map in order to enable comparison of the potential changes. (7)

Response: The commenter has incorrectly assessed the Cumberland County FWSA mapping. The Cumberland County FWSA map depicts existing SSA, existing pump stations, gravity mains, and force mains.

15. Comment: It is difficult to understand the impact of the proposed SSAs without acreage analysis. In order to enable the public to fully assess the impact of the mapping changes, Cumberland County and the Department should quantify any changes in terms of acreage removed or added prior to adoption of the FWSA map. (7)

Response: The Water Quality Management Planning rules do not require an acreage analysis be provided with a FWSA Map. However, when a complete WMP for Cumberland County is prepared, as discussed in response to Comment 7 above, it will contain a build-out analysis for both SSA and for areas to be served by individual subsurface sewage disposal systems. These analyses will include quantification of acreages both inside and outside of the SSA; therefore, such information will be provided as a part of Cumberland's full County-wide WMP.

16. **Comment:** The commenter is concerned about how the Department will review and process development or activity proposing use of septic systems. (7)

Response: The adoption of the FWSA Map for Cumberland County pursuant to P.L. 2011, c.203, as amended and supplemented by P.L. 2013, c.188, does not affect or alter the Water Quality Management Planning rules (N.J.A.C. 7:15) amendment requirements or review process for proposed development that will utilize septic systems. Proposed development reliant on an individual subsurface sewage disposal system (ISSDS) on a single lot to discharge equal to or less than 2,000 gpd of wastewater that can be approved by the local public health department as the acting administrative authority under N.J.A.C. 7:9A, whether in a designated FWSA or not, is not subject to N.J.A.C. 7:15. However, any proposed development utilizing an ISSDS which has been determined to discharge, individually or in combination on a single project property, greater than 2,000 gpd and requires a NJPDES permit, would necessitate an amendment to the appropriate WQM plan, if the project site is not identified as SSA to that specified facility requiring a NJPDES permit.

17. **Comment:** The commenter raises concerns about the Department's usage of a watershed based-nitrate dilution model to calculate lot density rather than the site specific approach that is currently used in the New Jersey Pinelands. (7)

Response: This comment goes beyond the scope of the proposed amendment. An entire WMP that is to conduct a septic density analysis on a Hydrologic Unit Code (HUC) 11 basis has not been proposed for adoption at this time. However, the Department has responded to similar

comments in the adoption notice for the WQM planning rules (N.J.A.C. 7:15) in July 2008. For the specific responses to the comments regarding applicability of the Recharge-Based HUC 11 Scale Nitrate Carrying Capacity Planning Tool model in conducting a HUC 11 septic density analysis as part of the completing a WMP the commenter may refer to the adopted rule notice published in the New Jersey Register on July 7, 2008, at 40 N.J.R. 4000(a).

18. Comment: The commenter raises concerns over the use of a watershed approach in the nitrate dilution model and the potential that the number of units and density that might be permitted within a HUC 11 watershed will cross county as well as municipal boundaries. (7)

Response: This comment goes beyond the scope of the proposed amendment. An entire WMP that is to conduct a septic density analysis on a HUC 11 basis has not been proposed for adoption at this time. However, Cumberland County intends to proceed to completion of a full County WMP either under the current Water Quality Management Planning rules or under the proposed new Water Quality Management Planning rules as discussed in more detail in the response to Comment 7, after they are adopted. The Department recognizes that there will be instances where the relevant spatial extent, both HUC 11 drainage areas and service areas of wastewater management and water supply service providers, will not coincide with county or municipal boundaries. The Department's role has been and will continue to include identifying and assisting in resolving any issues that arise as the WMPs are submitted for review.

19. Comment: The commenter asserts that there has been a lack of transparency in the process to create the draft FWSA maps, as well as a lack of substantive justification for the removal of

areas/properties from the existing SSAs. The commenter is disappointed that, unlike Somerset County, Cumberland County did not individually notify property owners where their property was affected by the mapping procedures. The commenter believes that notice is a critical and necessary step to protect property interests and should have been incorporated into the Wastewater Management Planning process by all counties and the Department. At this juncture, only through this public review and commenting process would property owners and other stakeholders have an opportunity to rectify any mapping mistakes. Therefore, the commenter strongly encourages the Department and the Counties to not rush through the adoption process, but to allow ample time to address any issues. (7)

Response: The Department and Cumberland County have pursued an open and extensive public review process beyond the minimum requirements of the WQM Planning rules. The Department and Cumberland County held numerous meetings with the public, municipal officials, and affected agencies over the past four years. Further, in accordance with AO #2010-3 signed by DEP Commissioner Martin, a public meeting was held on March 31, 2011, to allow public review and comment on the then-current draft of the Cumberland County FWSA map. 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. The Department notes that notice of every individual property impacted by this amendment is not required by the adopted Water Quality Management Planning rules, and Cumberland County did not wish to pursue that option.

20. Comment: The commenter is concerned that the Department and counties will be inundated with applications for site-specific amendments and revisions following the adoption of the county FWSA maps. The commenter views the process as being very costly, resource intensive and unnecessarily slow, and strongly urges the Department and Cumberland County to abide by the timeframes and review process set forth in Sections 6-8 of the 2011 Water Quality Management Plan law (P.L. 2011, c.203). (7)

Response: The Department fully intends to adhere to any review timeframes required by law or statute.

21. Comment: The commenter appreciates the Department and the County's determination to uphold the Pinelands MOU, which recognizes the "management area designations and boundaries established by the Commission for lands located within the Pinelands Area," as it relates to SSA for the Pinelands Area. As stated in the notice, the "Department shall not require that ESAs ... be removed from an existing or proposed SSA within a Regional Growth Area, Pinelands Town, Pinelands Village, or substantially developed portions of a Military and Federal Installation Area." (7)

Response: The Department acknowledges the commenters support of this action.

Approval of this amendment 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. Sewer service to a particular property is subject to contractual

arrangements between municipalities, authorities and/or private parties, and is not guaranteed by this amendment.

The adopted map is available at the Department's Office of Water Resources Management Coordination, 401 East State Street, Trenton, New Jersey or online at <http://www.nj.gov/dep/wqmp/wmpnotices.html>.



Colleen Kokas, Director
Office of WRM Coordination
Department of Environmental Protection

1-15-16

Date