

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION DIVISION OF COASTAL AND LAND USE PLANNING

Adopted Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that on **MAR 11 2015**, pursuant to the provisions of the New Jersey 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, 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 Department of Environmental Protection (Department) adopted an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment, submitted on behalf of the Middlesex County Board of Chosen Freeholders as the designated WQM Planning Agency for the Lower Raritan/Middlesex County WQM Planning Area, adopts a Future Wastewater Service Area (FWSA) Map for Middlesex County. Notice of the Department's proposal of this amendment was published in the New Jersey Register on October 20, 2014, at 46 N.J.R. 2115(d). A public hearing on the proposed amendment was held on November 24, 2014, by the Middlesex County Board of Chosen Freeholders. The public comment period on the proposed amendment closed 15 days later on December 9, 2014.

Two FWSA Maps for Middlesex County were previously proposed but not adopted. The first proposed amendment was published in the New Jersey Register on May 6, 2013, at 45 N.J.R. 1189(a). The first proposed FWSA Map included Monroe Township; however, prior to the scheduled public hearing, Middlesex County issued a revised public notice in the Home News, the Courier News, the Trenton Times, and the Star Ledger newspapers for the hearing stating

that the proposal was only for the FWSA Map for that portion of Middlesex County within the Lower Raritan/Middlesex County WQM Planning area with the exception of Monroe Township. A public hearing was held on June 5, 2013. The public comment period ended on June 20, 2013.

The second proposed amendment, which included Monroe Township and made other amendments to the initial proposal, was published in the New Jersey Register on October 7, 2013, at 45 N.J.R. 2272(a). A public hearing on the second proposed amendment was held on November 12, 2013 by the Middlesex County Board of Chosen Freeholders. The public comment period on the Middlesex County WQM Plan closed 15 days later on November 27, 2013. However, the Middlesex County Board of Chosen Freeholders, as the designated planning agency, did not approve the amendment within 60 days, as required by their adopted procedures.

The amendment proposed on October 20, 2014, which is being adopted at this time, includes Monroe Township as part of the FWSA Map and also includes amendments to the initially submitted and proposed FWSA Map that had been included in the amendment proposed on October 7, 2013.

This public notice started a new 30-day public comment period, including a new public hearing, to accept public comment on the proposed amendment.

All comments submitted during all three comment periods and at the public hearings on the previous notices were considered by the Department in reviewing the current amendment.

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 FWSA Map modifies the previously approved SSA to exclude environmentally sensitive areas that are not currently connected to sewer systems. Additionally, the FWSA Map removes areas from SSA based on local planning objectives, and also includes areas previously excluded from SSA based on local planning objectives. This amendment only modifies the wastewater service area mapping portions of the above referenced WQM Plan.

Pursuant to 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 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, as amended and supplemented by P.L. 2013, c.188, shall expire on January 17, 2016, or upon the adoption of rules or regulations that the Department specifically states in a notice in the New Jersey Register are intended to obviate the need for the provisions of P.L. 2011, c.203 and meet the purposes of the "Water Quality Planning Act," P.L. 1977, c.75 (C.58:11A-1 et seq.), whichever is earlier.

The Department and Middlesex County have held numerous meetings with the public, municipal officials, and affected agencies over the past five years. Further, in accordance with Administrative Order No. 2010-03 (AO #2010-3) signed by Commissioner Martin, a public meeting was held on July 21, 2010, to allow public review and comment on the then-current draft of Middlesex 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 proposed SSA. 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 (Landscape Project), version 2.1. Areas identified by the Landscape Project as being suitable habitat for threatened and endangered species 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)2, areas mapped as Natural Heritage Priority Sites are not included in the proposed 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 proposed SSA, 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 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 identified on the CAFRA Planning Map, must also be excluded from SSA. The preliminary notices incorrectly stated that there were no portions of Middlesex County located within the “coastal area” as defined at N.J.S.A. 13:19.4. However, there is, in fact, a small coastal area located within the county. Within this area, SSA is not included in any Coastal Fringe Planning Areas, Coastal Rural Planning Areas, or Coastal Environmentally Sensitive Areas, with the following exceptions. Areas previously designated as SSA where wastewater collection infrastructure currently exists, and/or where sewage producing structures are connected to the system, remain in the SSA. SSA designation has also been provided 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 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 proposed 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 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, 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 Lower Raritan/Middlesex County 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.

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. Approval of this amendment does not provide any implied approval for any other aspects of any project or needed permits and approvals.

The following people provided comments on at least one of the three proposed amendments during the applicable comment periods:

Number – Commenter Name – Affiliation

1. Barbara Nyitrai, South Brunswick Township Clerk
2. Ronald Shimanowitz, Hutt and Shimanowitz (representing South Brunswick Properties, LLC)
3. Jennifer Lackland, Lackland Associates, LLC
4. Tung-To Lam, Bohler Engineering
5. Richard Burrow, Langan Engineering (on behalf of Cranbury Brick Yard, LLC)
6. Dennis Toft, Wolff and Samson (on behalf of Cranbury Brick Yard, LLC)
7. Matthew Baillie, President, Englishtown Game Farm Corporation
8. Barbra Koonz, Wilentz, Goldman and Spitzer (representing Englishtown Game Farm and Swales Farm)
9. Lori Grifa, Wolff and Samson (representing Metuchen Reality Acquisitions)
10. Bruce Koch, South River Borough Engineer CME Associates
11. Daniel Busch, Maser Consulting
12. James Clarkin, Clarkin & Vignuolo, P.C., Assistant Township attorney for Piscataway Township
13. Shannon Slowey Callahan, Attorney, Union Carbide Chemical
14. Kelly McCormick/Bryan Waisnor, Langan Engineering (on behalf of Lincoln Equities Group)

15. Steven Gardner, Van Note-Harvey Associates
16. Frank Petrino, Eckerd Cleamons
17. Tony DiLodovico, Tony D Environmental Permitting (representing the Morris Companies)
18. Michael Gross, Giordano, Halleran & Ciesla (representing Shared Properties, LLC)
19. Stanley Slachetka, T&M Associates (on behalf of South Plainfield Borough)
20. Elizabeth George-Cheniara, Esq., New Jersey Builders Association (also on behalf of the Shore Builders Association of Central New Jersey)
21. Tony DiLodovico, Tony D Environmental Permitting (representing M. Alfieri Co., Inc.)
22. Kathleen Barney, Borough of Carteret Clerk (representing Carteret Municipal Council)
23. John Papanastasiou (on behalf of Birchco Realty, LLC)
24. Steve Ganch, Cranbury Brick Yard, LLC
25. Randy Csik, American Properties at Monroe, LLC
26. Robert DiLeo, Manager, Bircho Realty, LLC
27. Herman Zell, Zell Enterprises, LLC
28. Michael J. Barnes, Director, Monroe Township Utility Department

A summary of the comments submitted during all three public comment periods and public hearings associated with the three separate published preliminary notices related to this FWSA Map (May 6, 2013, October 7, 2013, and October 20, 2014) and the Department's responses, follows below. The number(s) in parentheses after each comment identifies the respective commenter listed above.

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.

The preliminary notice of this amendment represented the Department's determination that the County's proposed SSA is in compliance with the regulatory criteria for identifying SSA pursuant to N.J.A.C. 7:15-5.24. As a result of the Department's adoption of this amendment, 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 amended and supplemented by P.L. 2013, c.188, as applicable. Information regarding application for these amendments and revisions can be found at <http://www.nj.gov/dep/wqmp/applications.html>.

Comments and Department Responses

1. Comment: The commenters request that Block 22.01 Lot 2.03 in South Brunswick Township should be included in the SSA. South Brunswick Township submitted a resolution of consent (RES-2013-183) supporting inclusion of the parcel in the SSA upon rezoning of the parcel. Commenter #1 notes that 49-acres of the parcel were recently re-zoned as LI-4, with the remaining zoned RR; that the site is not identified as habitat for threatened and endangered species or C1 special water resource protection area; that a valid Freshwater Wetlands Letter of Interpretation identifies the wetlands on site are of intermediate resource value and receive a 50 foot transition area which will be respected by any development on the parcel; and, that the parcel is contiguous to the NJ Turnpike and industrial properties, making the parcel best suited for industrial development, which will result in little demand on the sewer system. These comments were submitted in response to both the May 6, 2013 and October 7, 2013 preliminary notices. (1 & 2)

Response: All but a corridor of mapped wetlands that are the headwaters of the tributary to Ireland Brook are included in SSA pursuant to N.J.A.C. 7:15-5.24. The majority of the parcel in question was included in the SSA on the proposed, and now adopted, FWSA Map.

2. Comment: The commenters request that Block 2101, Lots 6.01, 11.04 & 11.05, and Block 2207, Lot 1.02 in Piscataway Township be included in SSA. The necessary approvals for the development of a 422 total residential unit project have been secured from the Piscataway Planning Board, and Middlesex County Planning Board and a Freshwater Wetlands General Permit 10A and Transition Area Waiver have been obtained from the Department. Only the Soil Erosion and Sediment Control Certification from Piscataway Township, and a Treatment Works Approval from the Department are outstanding. These comments were submitted in response to the May 6, 2013 preliminary notice. (3 & 4)

Response: The Department has reviewed the FWSA Map for the parcels in question and notes that the entirety of Block 2101, Lot 6.01 and Block 2207, Lot 1.02 was proposed to be, and is now included in, SSA. However, portions of Block 2101, Lots 11.04 and 11.05 mapped as wetlands remain outside of SSA pursuant to N.J.A.C. 5.24.

3. Comment: The commenters state that the Cranbury Brick Yard site in Cranbury Township - Block 10, Lot 10 – is a brownfield redevelopment site with an approved remedial action work plan and the necessary wetlands, and other, permits necessary for remediation and redevelopment. The comments note that the SSA on the site was not properly represented, and does not incorporate the entire approved footprint of development, as reflected on mapping provided by the commenters which identify the inconsistencies. The commenter requests that the entire footprint of development should be included in SSA. These comments were submitted in response to both the May 6, 2013 and October 7, 2013 preliminary notices. (5, 6 & 24)

Response: The Cranbury Brick Yard site is a contaminated site that is proposed for remediation pursuant to an approved remedial action work plan which identifies the portions of the site to be remediated. In this case, the remediation activities will disturb existing wetlands.

This disturbance has been reviewed and approved by both the Department and U.S. Environmental Protection Agency. As such, these areas will no longer meet the definition of environmentally sensitive areas in the WQM Planning rules at N.J.A.C. 7:15. The Department attempted to delineate the SSA on the Cranbury Brick Yard site based upon the areas of disturbance reflected in the approved remedial action work plan. However, small portions along the edges of the SSA were mapped incorrectly, as demonstrated by the commenter. The SSA was corrected and included in the proposed FWSA Map prior to the issuance of the third preliminary notice on October 20, 2014. Thus, this issue has been addressed.

4. Comment: The commenters request that Block 36, Lots 13, 14, 15 and 16.01, known as the Swales Farm and Englishtown Game Farm, in Monroe Township, should be included in SSA. Commenter states that the parcels were excluded erroneously based on the extent of mapped threatened and endangered species habitat, specifically the Silver-bordered Fritillary. The commenter states that the parcels can be developed consistent with local zoning and Department land use regulations and any environmentally sensitive areas on the parcels do not meet the 25-acre threshold for removal from SSA. These comments were submitted in response to the October 7, 2013 preliminary notice. (7 & 8)

Response: Portions of Block 36, Lots 13 and 14, which include disturbed and developed areas that are not mapped as ESA were proposed, and have been included, in SSA. Both Landscape Project versions 2.1 and the more recent version 3.1 show virtually all undeveloped and undisturbed portions of all the parcels identified by the commenters as habitat for threatened and endangered species (Silver-bordered Fritillary). The undeveloped portions of these parcels additionally include a significant amount of wetlands totaling well over 25 acres. As such, pursuant to N.J.A.C. 7:15-5.24, the undeveloped and undisturbed portions of the parcels in question are excluded from SSA.

5. Comment: The commenter requests that two acres of Block 37, Lots 5.12 (partial), 5.22, 16.02, 17.01 (partial) & 17.02 in Metuchen Township should be included in the Middlesex County Sewerage Authority SSA. While it is acknowledged that approximately 20 acres of the 32-acre area is environmentally sensitive, two of the remaining 12 acres should be included in

SSA. The commenter states that the requested two acres are incorrectly mapped as wetlands, and have been used as a lay-down area in connection with other on-site operations in the past, and a 150-foot concrete slab, the remnants of a former parking lot including light poles, compacted soils, and buried asphalt, can be found on the area. The commenter also submitted a Freshwater Wetlands Letter of Interpretation (LOI) application in response to the first public comment period, and the approved LOI in response to both the second and third preliminary notices, to demonstrate that a portion of the site is not environmentally sensitive. These comments were submitted in response to each of the three preliminary notices. (9)

Response: The submitted LOI shows that Block 37, Lots 5.12, 16.02, and 17.01 are not, in fact, wetlands. The LOI further shows that significant portions of Block 37, Lots 5.22 and 17.02 are confirmed wetlands and, as such, remain excluded from SSA pursuant to N.J.A.C. 5.24. Because the lots that are no longer considered to be wetlands were proposed to be excluded from SSA, and a change on adoption would be considered a substantial change as described above, any changes to the FWSA Map would be required to go through the amendment or revision application process, as applicable, in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as amended and supplemented by P.L. 2013, c.188, as applicable. Therefore, the requested modification to SSA has not been made.

6. Comment: The commenter requests that Block 68, Lot 1, Block 77.01, Lot 1, and Block 83, Lot 1 located in the Borough of South River should remain in SSA. The commenter submitted a Freshwater Wetlands Letter of Interpretation and site plan approval from the Borough of South River. These comments were submitted in response to the May 6, 2013 preliminary notice. (10)

Response: While there are environmentally sensitive features identified on the parcels in question, they do not meet the 25-acre threshold for removal from SSA. However, 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 requested modification to SSA has not been made.

7. Comment: The commenter requests that Block 62.02, Lots 20 & 22; Block 257, Lots 3.04 & 3.05; Block 257.01, Lots 1, 1.01, 1.10, 4, 5, 6 & 30.12; Block 257.02 Lots 1 & 1.01 ; and Block 275, Lot 1 located in Sayreville should be included in the SSA. These comments were submitted in response to the October 7, 2013 preliminary notice. (11)

Response: The Department confirms that all parcels in question were included in the SSA in the proposed, and now adopted, FWSA Map.

8. Comment: The commenters object to the removal of a portion of the Dow Chemical/Union Carbide site in Piscataway Township and Middlesex Borough should not be removed from SSA. The commenters note that the site is owned by DOW Chemical Company, has been zoned and used for industrial purposes for decades, has been declared an area in need of redevelopment, is proposed to be included in a redevelopment plan being developed with a contract purchaser, the redevelopment is a high priority for the Township, and it is not possible to operate an industrial site without access to public sewer service. The commenters request that Block 3502, Lot 6.03, Block 356, Lot 1, Block 421.1, Lots 1.03, 1.04, and 6.03 in the Township of Piscataway, and Block 353, Lots 1.01 and 1.02 in the Borough of Middlesex, should be included in SSA. These comments were submitted in response to the October 7, 2013 preliminary notice. (12, 13 & 14)

Response: While the commenters refer to the site in question as different parcel numbers and/or as either the Union Carbide Corporation or Dow Chemical Facility, the Department has determined that they are all referring to the same site in Piscataway Township. Much of the area in question remains in SSA. However, approximately 2/3 of Block 3502 (previously designated as Block 421.1), Lot 6.03 in Piscataway Township is identified as environmentally sensitive area due to mapped wetlands and so was removed from SSA. Subsequent to the second preliminary notice, an LOI was issued by the Department confirming the existence of wetlands on the eastern and southwestern corners of the site. The proposed SSA was modified prior to the third, October 2014, preliminary notice to reflect this changed information. Accordingly, the adopted FWSA Map addresses appropriate changes in response to these comments.

9. Comment: The commenter requests Block 148, Lot 114.01 in North Brunswick Township should remain in SSA. The commenter submitted information to rebut the presumption that the parcel is suitable habitat for threatened and endangered species and a Freshwater Wetlands Letter of Interpretation (LOI). These comments were submitted in response to each of the three preliminary notices. (15)

Response: A significant portion of the parcel is mapped as wetlands, which is also identified as habitat for threatened and endangered species (Wood Turtle) and so was removed from SSA pursuant to the WQM Planning rules at N.J.A.C. 7:15-5.24. The LOI submitted by the commenter remains valid pursuant to the Permit Extension Act. The commenter also submitted a Habitat Suitability Determination report to rebut the presumption that these areas be identified as environmentally sensitive based on the data relied upon which is asserted to support the commenter's position that the parcel should be included in SSA. The Department reviewed that report and determined that the likelihood of there being a viable Wood Turtle population using the habitat proximate to the site is extremely limited. However, the Department did not finalize this determination until after the third preliminary notice in October, 2014 and, accordingly, the FWSA Map proposed as part of that notice did not reflect the parcel as being within SSA. As such, 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 requested modification to SSA has not been made.

10. Comment: The commenters requested that the entirety of Block 82, Lot 3.01 in Monroe Township should be included in the SSA. The commenters submitted a Freshwater Wetlands Letter of Interpretation and provided a Habitat Suitability Determination to the Department to refute the existence of threatened and endangered species habitat. These comments were submitted in response to both the October 7, 2013 and October 20, 2014 preliminary notices. (16 & 17)

Response: A portion of Block 82, Lot 3.01 was initially excluded from SSA pursuant to the WQM Planning rules at N.J.A.C. 7:15-5.24 as it is mapped as habitat for threatened and

endangered species, and because it was determined to contain a small area of wetlands. The commenters submitted a Habitat Suitability Determination report and Freshwater Wetlands Letter of Interpretation to rebut the presumption that these areas be identified as environmentally sensitive based on the data relied upon which they assert supports their position that the parcel should be included in SSA. The Department did not complete its review of the Habitat Suitability Determination until after the end of the public comment period on the final, October 14, 2014, preliminary notice and, accordingly, the FWSA Map proposed as part of that notice did not reflect the parcel as being within SSA. Accordingly, any changes to the FWSA Map would be required to go through the amendment or revision application process, as applicable, in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as amended and supplemented by P.L. 2013, c.188, as applicable. Therefore, the requested modification to SSA has not been made.

11. Comment: The commenters requested that Block 19, Lot 3.01 in South Brunswick Township should be included in the SSA. These comments were submitted in response to both the October 7, 2013 and October 20, 2014 preliminary notices. (16 & 17)

Response: Block 19, Lot 3.01 in South Brunswick Township was included in the SSA on the proposed, and now adopted, FWSA Map.

12. Comment: The commenters disagree with decisions by the Department to not make changes upon adoption when information is provided during the public comment period that sufficiently refutes the identification of areas as environmentally sensitive. These comments were submitted in response to each of the three preliminary notices. (17 & 20)

Response: As noted above, pursuant to the WQM Planning rules, it is not possible for the Department to include in or exclude from SSA particular parcels which were not reflected in the way requested by the particular commenters in the October 14, 2014 proposed amendment if the requested change is determined to be a substantial change. Accordingly, requested changes determined to be substantial changes 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. The types of changes referenced by the commenters 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 and would accordingly 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.

13. Comment: The commenter requests that the non-wetlands portions of Block 4 Lots 9, 13.08, 13.09 & 13.10 in Monroe Township should be included in the SSA. The commenter notes that SSA was removed from portions of these parcels based on the Landscape Project version 2.1, which identified the areas as habitat for threatened and endangered species. The Landscape Project was recently updated to version 3.1, which modified the extent of habitat for threatened and endangered species on the parcels. The commenter also submitted a Freshwater Wetlands Letter of Interpretation to refute the extent of wetlands mapped on the parcels, and also submitted a Preliminary Major Subdivision approval from the Monroe Township Board of Adjustment. These comments were submitted in response to the October 7, 2013 and October 20, 2014 preliminary notices. (18)

Response: Block 4, Lots 13.08 and 13.09 are included in SSA. The Department agrees that the update of the Landscape Project to version 3.1 significantly modified the extent of environmentally sensitive areas on Block 4, Lots 9 and 13.10. Version 2.1 of the Landscape Project identified virtually all of these two parcels as habitat for threatened and endangered species. Version 3.1 of the Landscape Project no longer identifies significant portions of these parcels as habitat for threatened and endangered species. The submitted LOI remains valid pursuant to the Permit Extension Act.

With reference to the portion of the property subject to the Preliminary Major Subdivision approval submitted by the commenter, subsequent to the end of the public comment period, and prior to adoption of this amendment, as the parcel was included within approved SSA prior to the

amendment adopted at this time and the proposed development was thus consistent with the WQMP, the Department issued a treatment works approval for a project known as Shared Properties residential development, consisting of 186 3-bedroom townhouses, 47 2-bedroom apartment units, and 71,000 s.f. of on-site retail/office space. Pursuant to the WQM Planning rules at N.J.A.C. 7:15-8.1(b)2 and Administrative Order 2010-03, the parcel in question received all required approvals prior to adoption of this amendment. Accordingly, that portion of the proposed amendment that would have reclassified this parcel as not within the SSA is not adopted and this parcel continues to be classified as SSA.

14. Comment: The commenter requests that Block 40, Lot 7.01; Block 48, Lots 1, 7 & 9; Block 50, Lots 4, 6 & 7; Block 97, Lots 5, 6, 7 & 8; Block 110, Lots 12-18; Block 115, Lots 1 & 2.01; Block 308, Lot 30.04; Block 447, Lots 1, 2.02-2.04, 4.02, 5, 5.01, 5.03-5.07; and, Block 448 Lots 1, 4.01, 4.02 & 4.06 in South Plainfield Borough should remain in SSA. Additionally, the commenter stated that the properties removed do not meet the Department's 25 acre minimum requirement for removal from the SSA. These comments were submitted in response to the June 6, 2013 preliminary notice. These requests were also included in the consent resolution submitted by the commenter, the Borough of South Plainfield (Resolution 2013-178).
(19)

Response: Block 40, Lot 7.01 and Block 447, Lot 2.02, 5, 5.01, & 5.03, were included in the SSA on the proposed, and now adopted, FWSA Map.

Block 48, Lot 7; Block 308, Lot 30.04; Block 48, Lot 1 & Lot 9; Block 50, Lot 4; Block 50, Lot 6; Block 97, Lots 5-7; Block 110, Lots 12-18; Block 115, Lots 1 and 2.01; Block 447, Lots 1, 2.03, 2.04, 4.02, 5.04, 5.05, 5.06 & 5.07; and, Block 448, Lot 1, 4.01, 4.02 and 4.06 are mapped as significantly or 100 percent wetlands. In accordance with the WQM Planning rule at N.J.A.C. 7:15-5.24, these areas are not included in SSA. All developed portions of these parcels, however, are included in SSA.

Additionally, the WQM Planning rules at N.J.A.C. 7:15-5.24 that prescribe the methodology for the delineation of SSA state that "environmentally sensitive areas shall be defined...as any

contiguous area of 25 acres or larger, consisting of any of” the features identified at N.J.A.C. 7:15-5.24(b)1-4. As such, while the environmentally sensitive area on a particular parcel may not be 25 acres in size, if it is part of a larger contiguous area of environmentally sensitive areas, it qualifies as environmentally sensitive.

Accordingly, any changes to the FWSA Map would be required to go through the amendment or revision application process, as applicable, in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as amended and supplemented by P.L. 2013, c.188, as applicable. Therefore, the requested modification to SSA has not been made.

Block 50, Lot 7 and Block 97, Lot 8 are not identified as environmentally sensitive pursuant to N.J.A.C. 5.24, but were not included in the proposed SSA submitted on behalf of the Middlesex County Board of Chosen Freeholders as the designated WQM Planning Agency.

15. Comment: The commenter asserts that the Department should not rely on existing Geographical Information Systems (GIS) mapping data as it is not reliable and requires extensive field verifications. (19)

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 WQM 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 WMP 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) LOIs, Habitat Suitability Determinations, 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.

16. Comment: The commenter maintains that the Department and Middlesex County will be inundated with applications for site-specific amendments and revisions following the adoption of the county FWSA Map for properties that were not included in the SSA in response to requests received during the public comment period. The commenter expressed that, based upon experience, the site specific amendment and revision process is very costly, resource intensive, and unnecessarily slow. (20)

Response: The Department has, and fully intends to continue to, adhered to the specific review timeframes and requirements as dictated by law and regulation. In particular, P.L. 2011, c. 203, as amended and supplemented by P.L. 2013, c.188, placed specific timeframes on the Department's review of site specific amendments and revisions.

17. Comment: The commenter requests that the entirety of Block 2150, Lots 4.11, 4.14, 5.12 & 6.13 in Old Bridge Township be included in SSA. The commenter notes that a Freshwater Wetlands Letter of Interpretation, CAFRA permit, Stream Encroachment permit, and Freshwater Wetlands permit have been issued for development of the site. These comments were submitted in response to the May 6, 2013 preliminary notice. (21)

Response: The Department has taken efforts to include all developed and developable portions of the parcels within the SSA, consistent with the Department approvals identified by

the commenter. The SSA includes the non-environmentally sensitive portions of the above referenced lots, consistent with the permits that the commenter received from the Department. The environmentally sensitive portions of the above referenced lots remain excluded from the SSA. Therefore, the requested modification to SSA has not been made.

18. Comment: The Borough of Carteret submitted multiple resolutions expressing disapproval of the amendment as it fails to include Block 903, Lot 21; Block 10, Lots 8-10 and 12-21; and, Block 11.01, Lots 8, 10-14 and 28, for which the Borough Planning Board has granted certain preliminary and final site plan approval, in SSA. These resolutions were submitted in response to the May 6, and October 7, 2013 preliminary notices. (22)

Response: The Department has no record of the parcels identified by Carteret Borough as it appears that the lot numbers submitted by the applicant refer to previous lot numbers that have since been changed. However, mapping provided by Middlesex County identifies Block 10, Lot 8 (identified in Department data as Block 602, Lot 7) and Block 11.01, Lot 8 (identified in Department data as Block 705, Lot 18). These parcels are located at the northern-most point of Carteret Borough, along the Rahway River, east of the NJ Turnpike, and west of the confluence of the Rahway River and the Arthur Kill. There are a number of parcels in this area that were not proposed for inclusion in SSA as the vast majority are environmentally sensitive areas, mapped as wetlands and habitat for threatened and endangered species. All developed lands in this area are included in the proposed, and now adopted, FWSA Map. However, the Department can not verify the specific SSA designation of the other referenced parcels.

19. Comment: The commenters request that Block 594C, Lot 3 in Edison Township should be fully included in SSA. The commenters note that nearly half of the site is excluded from SSA, even though it already contains sanitary and storm sewers, including stormwater outfall structures and curbing, in accordance with approved utility plans. Commenters also note that the Township has already approved a final site plan for development of the site, and the Department issued a treatment works approval and stream encroachment permit for a project on the site known as Tyler Estates. Commenters also state that wetlands on the site were delineated and approved by the Department and the U.S. Army Corps of Engineers, which is referenced in

the Township Planning Board approval. Commenter provided a copy of the Planning Board resolution and treatment works approval. These comments were provided in response to the October 20, 2014 preliminary notice. (23, 27)

Response: The portion of the site not included in the proposed SSA is identified as wetlands. The resolution approving the subdivision and site plans references a wetlands delineation of 230.88 acres of wetlands. No mapping of the wetlands delineation was provided. The approved site plan map submitted shows virtually the entire parcel identified as parking lot and commercial buildings.

The TWA issued by the Department for Edison Tyler Estates, which includes the parcel in question, was also provided. Pursuant to the WQM Planning rules at N.J.A.C. 7:15-8.1(b)2 and Administrative Order 2010-03, the parcel in question has received all required approvals.

20. Comment: The commenter requests that the entirety of Block 67, Lot 22.02 should remain in SSA. The commenter notes that the portion of the parcel removed from SSA is part of the Forsgate Country Club West Course and is included in the zoned Planned Residential Golf Community. The commenter notes that the site is unconstrained by environmentally sensitive features and has ready access to existing infrastructure, including an eight-inch sewer main located in an easement that runs the length of the northern side of the property. This comment was provided in response to the May 6, 2013 preliminary notice. (25)

Response: The Department agrees that there are no environmentally sensitive areas identified on the parcel in question pursuant to N.J.A.C. 5.24, but it was not included in the proposed SSA submitted on behalf of the Middlesex County Board of Chosen Freeholders as the designated WQM Planning Agency. Any changes to the FWSA Map would be required to go through the amendment or revision application process, as applicable, in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as amended and supplemented by P.L. 2013, c.188, as applicable.

21. Comment: The commenter requests inclusion of Block 4401, Lot 8.05 in Piscataway Township should be included in SSA. The commenter provided a copy of a number of local and

Department approvals including Freshwater Wetlands Statewide General Permits 6 and 7, a letter of interpretation, stream encroachment permit issued by the Department, conditional preliminary subdivision approval from Middlesex County Planning Board, and Preliminary Major Subdivision Approval from the Piscataway Township Planning Board. The commenter also noted that, while no treatment works approval has been granted for the site, there is a collector line at the property frontage accessible for connection, potentially negating the need for a treatment works approval. This comment was provided in response to the October 20, 2014 preliminary notice. (27)

Response: The northeastern portion of the parcel, which is not environmentally sensitive, was proposed to be and is now included in SSA. The majority of the parcel that is not included in SSA is identified as environmentally sensitive area due to mapped wetlands and habitat for threatened and endangered species (Bald Eagle Foraging) pursuant to N.J.A.C. 5.24.

The Department is unable to determine, based on information available to it at this time, whether a treatment works approval is required, pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES) Rules at N.J.A.C. 7:14A-22.3 and N.J.A.C. 7:14A-22.4, for the parcel in question. If a treatment works approval is not required, then pursuant to the WQM Planning rules at N.J.A.C. 7:15-8.1(b)2 and Administrative Order 2010-03, the parcel in question has received all required approvals. Therefore, Department is approving the inclusion of the parcel in question in SSA on the adopted FWSA Map, conditioned upon there being no need for a treatment works approval. Should a treatment works approval, or NJPDES permit be required to provide wastewater to the parcel in question, the parcel shall not be considered to be included in SSA on the adopted FWSA Map.

22. Comment: The commenter has requested modification of the SSA for a project known as JSM at Monroe, located on Block 53, Lot 25, and Block 54, Lot 4 in Monroe Township, consistent with local and Department approvals. The commenter submitted a copy of the Preliminary Site Plan Approval by the Monroe Township Planning Board, and the treatment works approval issued by the Department. These comments were submitted in response to the October 20, 2014 preliminary notice. (28)

Response: Pursuant to the WQM Planning rules at N.J.A.C. 7:15-8.1(b)2 and Administrative Order 2010-03, the parcel in question has received all required approvals, and is included in SSA upon adoption of this amendment. Accordingly, that portion of the proposed amendment that would have reclassified the portions of the parcels covered by the aforementioned approvals as not within the SSA is not adopted and that portion of the property continues to be classified as SSA.

This amendment represents only one part of the permit process and other issues may need to be addressed prior to final permit issuance. Additional issues which may need to be addressed may include, but are not limited to, the following: compliance with stormwater regulations; antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

The adopted FWSA Map is available at the Department, Office of Water Resource Management Coordination, 401 East State Street, Trenton, New Jersey, 08625.



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

3-11-15

Date