



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Coastal & Land Use Planning

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Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

David McKeon
Ocean County Department of Planning
129 Hooper Avenue
Toms River, NJ 08753

FEB - 7 2013

Re: Ocean County Future Wastewater Service Area Map
Ocean County Wastewater Management Plan (WMP)
Ocean County Water Quality Management Plan (WQMP)
Program Interest No.: 435448
Activity No.: WMP120001
Adopted Amendment

Dear Mr. McKeon:

A plan amendment proposal was submitted to the Department of Environmental Protection (Department). This amendment, submitted on behalf of the Board of Chosen Freeholders of Ocean County will amend the Ocean County WMP. Since this amendment was prepared in accordance with the provisions of the New Jersey Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15), I am pleased to inform you that this amendment is now formally adopted as of the date of this letter. Final notice of this adoption will be placed in the New Jersey Register.

This amendment proposal was noticed in the New Jersey Register on May 21, 2012 at 44 N.J.R. 1663(b) and comments were received during the comment period.

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.

Please place the program interest number and the activity number found above at the top of all written correspondence submitted to the Department. If you have any questions on this matter, please contact the Division of Coastal and Land Use Planning at (609) 984-6888.

Sincerely,



Elizabeth Serio, Manager
Division of Coastal Land Use Planning

Enclosures

C: via email All Ocean County Clerks
Richard Warren, Ocean County Utilities Authority
Jerome Cevetello Jr., Manasquan River Regional Sewerage Authority
Paul Tyshchenko, NJ Pinelands Commission
Linda Brennan, Monmouth County Planning Board
Ron Bannister, NJDEP, Nonpoint Pollution Control
James Pontoriero, NJDEP, Construction and Connection Permits
Colleen Keller, NJDEP, Land Use Regulation
Martin Rosen, NJDEP, Coastal and Land Use Planning
Bill Purdie, NJDEP, Coastal and Land Use Planning
Rick Brown, NJDEP, Coastal and Land Use Planning
Deborah Bechtel, NJDEP, Coastal and Land Use Planning
Avi Argaman, NJDEP, Coastal and Land Use Planning
Steven Jacobus, NJDEP, Coastal and Land Use Planning

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

DIVISION OF COASTAL AND LAND USE PLANNING

Adopted Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that on ~~FEB~~ - 7 2013 pursuant to the provisions of the New Jersey Water Quality Planning Act (WQPA), N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules at N.J.A.C. 7:15-3.4, the Department of Environmental Protection (Department) adopted an amendment to the Ocean County Water Quality Management Plan (WQM Plan). This amendment, submitted on behalf of the Board of Chosen Freeholders of Ocean County as the responsible wastewater management planning agency, adopts a future wastewater service area map (FWSA map) for Ocean County. This map has been prepared pursuant to P.L. 2011, c. 203, enacted on January 17, 2012, which permits the wastewater management planning agency to prepare and submit to the Department at least that portion of a wastewater management plan (WMP) designating sewer service area (SSA), which shall comply with the Department's regulatory criteria. The adopted map, titled "Future Wastewater Service Areas (FWSA), Ocean County New Jersey," will supersede all wastewater service area mapping currently contained in the WQM Plan for areas within Ocean County, including that which was adopted into the WQM Plan as part of approved WMPs. 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 map modifies the previously approved SSAs to exclude environmentally sensitive areas (ESAs) that are not currently connected to sewer systems. Additionally, the map removes areas from sewer service based on local planning initiatives, 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, 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 update 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. Additional issues which may need to be addressed for any new or expanded wastewater treatment facility proposal include, but are not limited to, compliance with stormwater regulations, antidegradation, effluent limitations, water quality analysis, and exact locations and designs of future treatment works. Additionally, sewer service to any particular project is subject to contractual allocations between municipalities, authorities, and/or private parties, and is not guaranteed by this amendment. Finally, P.L. 2011, c. 203, expires on January 17, 2014, and the WQPA and implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15.

The Department and Ocean County have held numerous meetings with the public, municipal officials, and affected agencies over the past four years. Further, in accordance with Administrative Order No. 2010-03 (AO #2010-3) signed by Commissioner Martin, public meetings were held on March 10, 2011, and April 21, 2011, to allow public review and comment on the then-current draft of Ocean 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, ESAs have been assessed to determine what areas must be excluded in the adopted SSAs. Pursuant to N.J.A.C. 7:15-5.24(b), ESAs are described 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 (C1) special water resource protection areas, and wetlands, alone or in combination. These ESAs are not included in the SSA except as noted below.

In accordance with N.J.A.C. 7:15-5.24(b)1, to determine areas designated as threatened or endangered wildlife species habitat, the Department utilized the Division of Fish and Wildlife's Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, versions 2.1 and 3.0, as applicable, to determine areas designated as threatened or endangered wildlife species habitat. Areas identified by the Landscape Project as being suitable habitat for threatened and endangered wildlife species are not included in the adopted SSAs except as provided under N.J.A.C. 7:15-5.24(e) through (h).

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

In accordance with N.J.A.C. 7:15-5.24(b)3, areas identified as special water resource protection areas along Category One waters and their tributaries are not included in the adopted SSAs, except as provided under N.J.A.C. 7:15-5.24(e) through (h). Pursuant to N.J.A.C. 7:8-5.5(h), a 300 foot buffer is applied to both sides of a stream measured from the top of bank of an intermittent or perennial stream, or centerline if the bank is not defined, and from the defined edge of a lake, pond or reservoir at bank—full flow or level. Category One waters 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 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. This map text was inadvertently excluded from the proposed FWSA map. 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 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 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).

In accordance with N.J.A.C. 7:15-5.24(c), lands within certain coastal planning areas (Coastal Fringe, Coastal Rural, and Coastal Environmentally Sensitive Planning Areas) are not included in the adopted SSA, with some exceptions. 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 accordance with N.J.A.C. 7:15-5.24(d), areas with Federal 201 grant limitations that prohibit the extension of sewers to serve development in these areas 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. No Federal 201 grant limitations have been excluded from SSA through a narrative approach 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 document and compliance is required.

In addition to the ESAs with Federal 201 grant limitations that prohibit the extension of sewers identified under N.J.A.C. 7:15-5.24(d)1, other special restricted areas were excluded from SSA pursuant to N.J.A.C. 7:15-5.24(d)2 through 4. These include beaches, coastal high hazard areas, and dunes.

As discussed above, pursuant to N.J.A.C. 7:15-5.24(e) through (h), limited ESAs have been included in SSAs. Where applicable, Department wetland, flood hazard, and State open water permits or jurisdictional determinations have been utilized to determine the extent of the ESAs on individual lots.

The notice of this amendment proposal was published in the New Jersey Register on May 21, 2012, at 44 N.J.R. 1663(b). A public hearing on the proposed WQM Plan amendment was held

on June 25, 2012, in the Ocean County Library Toms River Branch. The Department and the Ocean County Department of Planning received comments during the comment period. Comments which are not relevant to the proposed amendment are not addressed in the following section of this notice.

The following people submitted comments on this amendment:

Number – Commenter Name, Affiliation

1. Charles Bonsangue, property owner
2. Helen Henderson, American Littoral Society
3. Theresa Lettman, Pinelands Preservation Alliance
4. Carol Murray, resident
5. Gerri Ballwanz, resident
6. Matthew Robinson, Mid Atlantic Engineering Partners
7. Tony DiLodovico, Tony D Environmental Permitting, LLC; Shore Builders of Central New Jersey
8. Timothy Touhey, New Jersey Builders Association
9. Robert McKinley, resident
10. Brian Murphy, FWH Associates
11. MaryAnn Sorensen Allacci, Projects for Environmental Health, Knowledge, & Action
12. Jay Lynch, Toms River Township Planner

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 was 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.

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

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

1. **Comment:** The commenter is a representative of a trust that owns the parcels identified as Block 263, Lots 1.02, 4, and 5, in Barnegat Township, also known as Lower Shore Estates. The commenter objects to the proposed WQM Plan amendment and that portion of the proposed SSA mapping that identifies the Lower Shore Estates parcel as being located outside of the proposed FWSA for Ocean County on the basis that it is within a habitat patch for threatened and endangered species. The commenter expresses that he received a Letter of Interpretation (L.O.I.) from the Department which delineates the location of wetlands on the property and submitted a Habitat Suitability Determination (HSD) pursuant to N.J.A.C. 7:15-5.26 to the Department to refute the Department's basis for exclusion of the property from SSA. . The commenter requests that the FWSA map be revised to include the uplands portion of the Lower Shore Estates property. (1)

Response: The Department has previously received and responded in writing to a request to include the above referenced property in the Ocean County SSA. In its response letter dated June 30, 2011, the Department acknowledged the above referenced L.O.I. and that it had submitted the trust's application for a HSD to the Department's Division of Land Use Regulation for further review and evaluation. However, the Department ultimately determined it could not include the above referenced properties in the SSA in accordance with N.J.A.C. 7:15-5.24(c) due to their location within a Coastal Environmentally Sensitive Planning Area as mapped by the New Jersey State Development and

Redevelopment Plan's State Plan Policy Map adopted in 2001 and last revised for a portion of Barnegat Township in 2012.

As mentioned above, in accordance with N.J.A.C. 7:15-5.24(c), Coastal Environmentally Sensitive Planning Areas have been excluded from the adopted SSA, with some exceptions not applicable to the subject property. The Department reiterates its position, as expressed in the June 30, 2011, letter, that the above referenced properties cannot be included in the SSA at this time. Should the commenter be able to secure a change in the site's Coastal Planning Area designation, the Department would be willing to consider an application to amend or revise the Barnegat Township chapter of the Ocean County WQM Plan pursuant to N.J.A.C. 7:15-3.4 or 3.5.

2. **Comment:** The commenters are concerned about the continued inclusion of certain areas in the proposed FWSA mapping. The commenters assert that inclusion of these areas must be further justified and it must be further demonstrated that the areas are consistent with the prohibition of including ESAs in future SSAs. The areas of the commenters' concern are within Ocean Township's Waretown area; Berkeley Township's Pinewald section; Lakewood Township west in the vicinity of Country Club Drive; Lakewood Township southwest of Crystal Lake; Little Egg Harbor Township in the areas of Ocean County Route 103, areas west of Leitz Boulevard, and areas east of Otis Bog Road and Mathistown Road; Lacey Township's Beach Boulevard and Sandy Hook Drive areas; Jackson Township east in the vicinity of Clear Stream Road; and Jackson Township's Jackson Woods Development. (2, 5)

Response: The commenters listed several locations in different municipalities which the commenters assert should not be included in the County's SSA. Of these sites, lands within Ocean Township's Waretown area and Berkeley Township's Pinewald section mapped by the Department as environmentally sensitive may remain in a SSA as these communities have gained Plan Endorsement from the State Planning Commission in accordance with the New Jersey State Development and Redevelopment Plan. As provided at N.J.A.C. 7:15-5.24(h), SSAs may include ESAs provided the areas are

designed to accommodate center based development and are an element of an endorsed plan approved by the State Planning Commission and where: 1) the Department has determined that the ESAs included in the SSA 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 species in the State; 2) the Department has determined that the endorsed plan adequately addresses the protection of ESAs located outside of the designated SSA; and 3) the wastewater management planning agency has identified an adequate wastewater management alternative in accordance with N.J.A.C. 7:15-5.25(a) through (c). The Department determined that the first two requirements for inclusion of these ESAs in SSA have been met, and Ocean County has determined that these lands will be served by an adequate wastewater treatment alternative.

With regard to the commenters' concern about the inclusion of lands in the SSA in the vicinity of Country Club Drive in Lakewood Township west and in the vicinity of Lakewood Township southwest of Crystal Lake, the Department had, upon the request of Lakewood Township, added or retained, where applicable, these areas in the FWSA mapping because they are not considered by the Department to be ESAs, as described in the Water Quality Management Planning rules at N.J.A.C. 7:15-5.24.

The areas of the commenters' concern within Little Egg Harbor Township in the vicinity of Ocean County Route 103 west of Leitz Boulevard and east of Otis Bog Road and Mathistown Road contain both non-ESAs and mapped ESAs, as defined in N.J.A.C. 7:15-5.24. The ESAs are located within properties that have received a Letter of Authorization (see NJDEP Land Use Program File No. 1516-03-0049.1 CAF 040001) granted through a contested case settlement, after notice of the settlement was published in the DEP Bulletin on May 17, 2006, and the fifteen-day public comment period closed. The Letter of Authorization allowing the construction of residential units, a community center and a recreation center complex is in lieu of a permit issued pursuant to the Coastal Area Facility Review Act (CAFRA). This Authorization remains valid due to the provisions of the Permit Extension Act of 2008, P.L. 2008, c. 78.

With regard to the commenters' concern over the inclusion of specific sites along Beach Boulevard and in the Sandy Hook Drive area in Lacey Township, the Department has determined that these areas are a fully developed marina, an Elks Lodge and parking lot, and a local park with baseball fields, all which do not meet the ESA criteria as defined under N.J.A.C. 7:15-5.24.

Within Jackson Township in the vicinity of Clear Stream Road, areas retained within the SSA are not environmentally sensitive based upon the criteria established at N.J.A.C. 7:15-5.24.

The commenters noted concerns about the inclusion in the FWSA of areas within the Jackson Woods Planned Unit Development. There is a commercial section of the project and a residential section of the project. The upland portions of the commercial section of this project are not considered endangered or threatened wildlife species habitat. In the commercial section, however, SWRPA buffer zones have been delineated and omitted from the FWSA mapping pursuant to N.J.A.C. 7:15-5.24(b)3 and 4. The remaining areas of the commercial portion of the project where development may occur are not ESAs. The residential portion of the project received local subdivision approvals from Jackson Township and gained approvals for treatment works from the Department, qualifying these project areas to be retained in the FWSA pursuant to the provisions at N.J.A.C. 7:15-8.1.

3. **Comment:** The commenters note that the April 9, 2012, Memorandum of Understanding (MOU) between the Department and the New Jersey Pinelands Commission (Commission) for the implementation of the Water Quality Management Planning regulations in the Pinelands Area says that the Department shall not require that ESAs, as delineated at N.J.A.C. 7:15-5.24(b), be removed from Regional Growth Area, Pinelands Town, Pinelands Village, and substantially developed portions of a Military and Federal Installation Area. It appears that Ocean County has in some cases removed the ESAs from these identified Pinelands Growth Areas but in other areas has allowed them to remain in a SSA. Because Ocean County has not applied the MOU consistently, looking

at the FWSA map, it is hard to know how areas that have not been removed will be treated. Will Ocean County follow the Pinelands Comprehensive Management Plan (CMP) growth area delineations and regulations or the Wastewater Service Area mapping of the Pinelands Growth areas? (3, 7, 8)

Response: The Department recognizes that areas that should have been included in SSA pursuant to the MOU were not included in SSA in the proposed Ocean County FWSA map. 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 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). The Department is not including areas that were excluded from SSA, but should have been included pursuant to the terms of the MOU, upon the adoption of this amendment because the Department has determined that such a change would be a substantial change requiring additional notice and comment prior to adoption. To comply with the terms of the MOU, the Department will be proposing, in an upcoming New Jersey Register, a separate amendment to the Ocean County WQM Plan to correct the FWSA map to reflect the terms of the MOU. The Department will work with Ocean County to ensure that ultimately the mapping of these areas accurately reflects the provisions of the MOU.

4. **Comment:** The commenters do not want the sewer on Drake Road, James Street, and Ridgeway Place in Lakewood Township because they feel the wells and septic tanks work fine on the large plots of land they live on. They are concerned about further degradation of Barnegat Bay with water that would otherwise return to the ground on their land for purification. (4, 5, 9)

Response: At the request of Lakewood Township, various areas were either added to or retained in SSA in the FWSA map. The expansion of the SSA to encompass the James Street, Ridgeway Place and Drake Road area were sought by Lakewood Township, and the Department determined that the area proposed to be included did not have ESAs, as described at N.J.A.C. 7:15-5.24, which would otherwise prevent their inclusion within the proposed SSA.

5. **Comment:** The commenter asserts that she has been trying for eight years to get her farm preserved. The County accepted her application in 2004 and she went through the lengthy process and got all approvals. She also obtained a County appraisal and was at the top of the list when everything stopped. (4)

Response: The commenter had sought to have her farm included in Ocean County's Farmland Preservation Program. Although farmland preservation is not related to this amendment, Ocean County has informed the Department that it was determined that the farm did not meet the eligibility requirements established by the County for inclusion in its farmland preservation program.

6. **Comment:** The commenter submitted supporting documentation on behalf of the property owner and contract purchaser/developer of Block 46.01, Lots 1.01 and 1.03, in Manchester Township, to object to removal of the property from the proposed Ocean County SSA and in support of the request that it remain included in the SSA. (6)

Response: The Department has previously received and responded in writing to a request to include the referenced property in the Ocean County SSA. Subsequent to the issuance of the Department's June 14, 2011, response letter, the applicant received preliminary and final site plan approval from the Manchester Township Planning Board and a Treatment Works Approval (TWA) from the Department. Because such approvals have been received prior to the effective date of the wastewater service area withdrawal from these areas, the wastewater service area should not have been withdrawn pursuant to

the “grandfathering” provisions of N.J.A.C. 7:15-8.1(b). Thus, the FWSA map has been amended upon adoption to include these properties in the SSA.

7. **Comment:** The commenter stated that Ocean County should provide a county-wide SSA map as it is not up on its website. (7)

Response: The Department’s Water Quality Management Planning rules do not require that Ocean County provide a county-wide SSA map on its website; however, Ocean County initially posted municipality-wide maps on its website and has since posted a county-wide FWSA map on its website at

[http:// www.planning.co.ocean.us/watershed/maps/fwsa_map_12-12-12.pdf](http://www.planning.co.ocean.us/watershed/maps/fwsa_map_12-12-12.pdf).

8. **Comment:** The commenters assert that other counties have provided various mapping notes that are required by Department regulations, yet the Ocean County maps lack any of these mandated notes or any other notes. (7, 8)

Response: The mapping notes, which were inadvertently omitted from the municipality-wide maps that were initially posted on Ocean County’s website, have been added to the county-wide map. The addition of these notes is a technical modification to the map that the does not change the substance of the originally proposed maps and thus does not destroy the value of the public notice of the proposed amendment. The public notice of the proposed amendment explained the bases for exclusion of areas from SSA and such information was available upon request from the Department, as stated in the public notice of the proposed amendment.

9. **Comment:** The commenters question the appropriateness of the Department mandating that properties be removed from the SSA based upon existing Department GIS mapping data related to the location of freshwater wetlands, species habitat, and stream buffer locations. (7, 8)

Response: The Department believes that the use of GIS is not only the most accessible approach for wastewater management planning agencies but is also appropriate for the scale of planning required in the Water Quality Management Planning rules at N.J.A.C. 7:15. Because GIS coverages are readily available, have a high degree of accuracy, and can be viewed at various scales, they provide a means to simplify the 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) 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.

10. **Comment:** The commenter encourages the Department and Ocean County to provide ample time to address any issues prior to adoption of the FWSA map. (8)

Response: The Department and Ocean County have pursued an open and extensive public review process beyond the minimal requirements of the Water Quality

Management Planning rules. The Department and Ocean County have held numerous meetings with the public, municipal officials, and affected agencies over the past four years. Further, in accordance with Administrative Order No. 2010-03 (AO #2010-3) signed by Commissioner Martin, public meetings were held on March 10 and April 21, 2011, to allow public review and comment on the then-current draft of the Ocean 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. The Department notes that notice to every individual property impacted by this amendment is not required by the Water Quality Management Planning rules.

11. **Comment:** The commenter asserts that the FWSA map is geographically poor, difficult to read and interpret, and should include more basic information like property lines and street names to help property owners to determine if they are impacted by simply looking at the map. (8)

Response: Although the resulting adopted FWSA map does not include local street names, it does identify the names of municipalities and major highways, and county roads and many local roads are identified by line graphics. As displayed, this available information is sufficient for locating specific properties. The Department and Ocean County sought to provide a balance of graphic and textual information to preserve the ability to adequately view the proposed FWSA boundaries, which are the focus of the FWSA map.

12. **Comment:** The FWSA map does not provide detail or justification as to why different areas/properties are proposed to be eliminated from or added to the existing SSA. Ocean 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 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. (8)

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 indicated above in the response to comment 11, 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 again 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 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 Ocean County have provided at numerous meetings, and via numerous correspondence, similar information. Finally, the WQPA 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.

13. **Comment:** The commenter asserts that the proposed FWSA map favors removal of areas. Many areas are being eliminated though they are completely surrounded by existing and proposed SSAs, such as in Berkley Township. The commenter also notes that the removal of individual lots near highways and access ramps do not make sense given that these could be higher density, mixed use developments that may serve to meet a town's COAH obligations.(8)

Response: The Water Quality Management Planning rules provide that areas may not be included in a future SSA if the areas are 25 acres or more of environmentally sensitive land; the areas fall within an area mapped within the State's Coastal Zone by the State Plan Policy Map as a Fringe, Rural, or an Environmentally Sensitive Coastal Planning Area; or the areas fall within a special restricted area where local mapped information exists delineating these areas, or through narrative description in a WMP where a reliable

mapping source does not exist. In addition, a Wastewater Management Planning agency may also exclude additional land from SSA based on local planning objectives.

The areas identified by the commenter within Berkeley Township, for instance, were not included on three of these bases. First, the Township has just completed an extensive planning process designed to help manage and encourage new development through the institution of a Transfer of Development Rights program and designation of a new Town Center and other focused areas of growth by the State Planning Commission. Some areas not proposed for sewer service are no longer viewed by the Township as appropriate for inclusion in a service area because of local planning objectives. Second, certain areas have not been included in sewer service because of the extent of ESAs such as threatened and endangered species habitat. Finally, as part of Berkeley Township lies within the State's Coastal Zone, lands within Berkeley Township's Coastal Zone were not included in SSA if they are located in a Coastal Fringe, Rural, or Environmentally Sensitive Planning Area and where wastewater collection infrastructure does not currently exist and sewage producing structures are not connected to the system; are not considered infill; or are not necessary to include in SSA 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, Berkeley Township is under the jurisdiction of the Council for Affordable Housing and plans to locate any affordable housing units that may be required by the Council within the future SSA.

14. **Comment:** The commenter asserts that areas of previously approved SSA which are surrounded by existing and proposed SSA on the FWSA map have been removed. Portions of lands constrained in various ways, such as lands preserved in public ownership, detention basins, cemeteries, highway medians, and rights of way (ROW) which do not qualify as environmentally sensitive (25 acres or greater) and cannot be developed are proposed to be removed from the SSA. It is unclear as to why such lands need to be removed from the SSA as they are not buildable. Similarly, there is no justification, from an environmental sensitivity standpoint, for the uniform removal of SSA on golf courses as proposed on the FWSA map as this prevents the redevelopment

on these properties with alternate uses. Areas currently served by septic systems that were designed and constructed prior to 1989 should be included in SSA. (8)

Response: The Department recognizes that some undevelopable lands, such as detention basins, cemeteries, highway medians, ROWs, and common lands owned by homeowners associations, although not environmentally sensitive, were removed from the SSA. The Department maintains that, as no wastewater is to be generated for such sites, there is no compelling need to identify them as SSA. In fact, their inclusion in SSA gives the misrepresentation that these areas can be developed.

The removal of SSA from certain golf courses was not conducted independently by the Department, but, rather, in consultation with Ocean County and the respective municipalities. In some cases, if underlying residential zoning was present on the golf course, SSA was afforded to specific privately owned parcels, currently in use as a golf course, to allow for alternative future redevelopment. However, this was done only when consistent with the local planning needs. Alternately, on publicly owned and operated courses, SSA was limited to wastewater generating structures such as the club house.

The decision to include parcels currently served by septic systems within the SSA, was based on local planning objectives of the individual municipality, the availability of sewer infrastructure, if any, and upon agreement from the managing sewerage or municipality utility authorities, regardless of the timeframe it was installed.

15. **Comment:** The commenter is concerned about property in Jackson Township on Whitesville Road, specifically Block 19501, Lots 29 and 30. The property has a Pinelands certificate. Wetlands are also delineated on the property (there is only a small pocket of wetlands), so the wetlands portion is already protected. It appears that the back half of the property, which does not consist of wetlands, has been removed from the SSA on the FWSA map. The commenter would like to have the back half of the property moved back into the SSA. (10)

Response: The Department acknowledges that the entire property is located within a Pinelands Regional Growth area. As discussed above in the Department's response to comment 3, areas located within a Pinelands Regional Growth area should have been included in SSA pursuant to the MOU. The Department is not including areas that were excluded from SSA, but should have been included pursuant to the terms of the MOU, upon the adoption of this amendment because the Department has determined that such a change would be a substantial change requiring additional notice and comment prior to adoption. To comply with the terms of the MOU, the Department will be proposing, in an upcoming New Jersey Register, a separate amendment to the Ocean County WQM Plan to correct the FWSA map to reflect the terms of the MOU. The Department will work with Ocean County to ensure that ultimately the mapping of these areas accurately reflects the provisions of the MOU.

16. **Comment:** The commenter urges the Department to promote the installation of sewers in those existing neighborhoods that threaten water sources for Brick Township and other communities downstream from Lakewood. Such neighborhoods include the Lake Carasaljo, Lake Manetta, and Lake Shenandoah portions of the Barnegat Bay watershed which have tested high in fecal coliform and demonstrate changes and management actions (e.g. additions of herbicide) associated with excess nutrients. Many homes in these neighborhoods contain aging septic systems in disrepair that can ultimately leak and contaminate the waterbodies. (11)

Response: The neighborhoods in and around the referenced waterbodies in Lakewood Township noted by the commenter are included in the future SSA in Lakewood. The Department supports the installation of sewage collection systems to serve these neighborhoods and notes that the Township's franchised sewage collection utilities are responsible for constructing the needed infrastructure.

17. **Comment:** The commenter explains that in a recent meeting with the prospective developers of a 100% affordable housing development on West Hickory Street (Block 164, Lot 4) in Toms River, it was noted that the FWSA mapping does not cover the entire

site, but excludes a portion of the site based on a 300 foot Category One waterway buffer related to a tributary of the Toms River. The commenter notes that the Department made a determination in writing within the past two years that the Category One buffer does not apply to that portion of the tributary that runs through lot 4. If the excluded area remains as shown, a portion of the proposed development will not be served, so the map should be changed to more accurately reflect the current status of that portion of the tributary. The commenter has a similar problem with many of the municipally owned park and recreation sites that are dedicated to park uses. The commenter does not see any reason why these protected sites should not be included in the future SSA. The commenter asserts that the current method used (including the proposed bathroom locations of the park and recreations sites in SSA) is not sufficient. This method does not afford the Township a way to add bathrooms or expand bathrooms at parks, short of a time consuming WQM Plan amendment. (12)

Response: The Department has requested that the commenter provide a copy of the determination referred to for Block 164, Lot 4, so that this claim can be reviewed and further evaluated. To date, Department staff has been unable to substantiate this determination. As such no change has been made to include the area of Lot 4 within the FWSA mapping.

With regard to the restrooms in municipal parks, the Department does not generally support the broad inclusion of preserved open space within SSA. The point of including an area in SSA is to serve existing or planned sewage generating development. As preserved open space is often deed restricted to prevent development of a site beyond that necessary to support its intended recreational use, it is inappropriate to include entire parcels of preserved open space in SSA. During this amendment process, the Department and Ocean County made multiple requests to all municipalities and government agencies for all planned development in parks and open space so that they could be included in the SSA if they were constructed outside of all environmentally constrained areas. The Department included in SSA small and developed open space areas and excluded large undeveloped open space areas or open space areas where ESAs are present. The

Department will continue to work with counties and municipalities to identify appropriate, limited areas on preserved open space parcels that can be included in SSA through future WQM Plan amendments or revisions in order to provide the public with restrooms and other facilities to support the recreational use of the parcels. The Department will work with Ocean County to include a text section to the draft Ocean County WQM Plan that notes that Toms River Township desires the ability to construct new restroom facilities in municipally owned parks where appropriate and that a WQM Plan revision may be required.

Adoption 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. Further, the WQPA and implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15.

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



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

2/7/13

Date