

## PUBLIC NOTICE

### ENVIRONMENTAL PROTECTION

### DIVISION OF COASTAL AND LAND USE PLANNING

#### Adopted Amendment to the Cape May County Water Quality Management Plan

#### Public Notices

Take notice that on **NOV - 6 2013**, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Quality Management (WQM) Planning rules, N.J.A.C. 7:15, and P.L. 2011, c. 203, the Department of Environmental Protection (Department) adopted an amendment to the Cape May County WQM Plan. This amendment was submitted by the Cape May County Department of Planning on behalf of the Cape May County Board of Chosen Freeholders as the responsible wastewater management planning agency 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 Area Map (FWSA), Cape May County," will supersede all wastewater service area mapping currently contained in the WQM Plan for areas within Cape May County, including that which was adopted into the WQM Plan as part of an approved WMP.

This 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 (gpd). The map modifies the previously approved SSAs to exclude environmentally sensitive areas (ESAs) that are not currently connected to sewer systems. Additionally, the map removes areas from sewer service based on local planning initiatives, and also includes areas previously excluded from SSA based on local planning objectives. This

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

The Department and Cape May County have held numerous meetings with the public, municipal officials, and affected agencies over the past four years. Further, in accordance with Administrative Order No. 2010-03 (AO #2010-3) signed by Commissioner Martin, a public meeting was held on April 6, 2011, to allow public review and comment on the then-current draft of Cape May 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 are appropriately included in the adopted SSAs. Pursuant to N.J.A.C. 7:15-5.24, ESAs are defined as contiguous areas of 25 acres or larger consisting of habitat for threatened and endangered

wildlife species as identified on the Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, Natural Heritage Priority Sites, Category One special water resource protection areas, and wetlands, alone or in combination.

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

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

In accordance with N.J.A.C. 7:15-5.24(b)3, areas identified as special water resource protection areas along Category One waters and their tributaries are not included in the adopted SSAs, except as provided under N.J.A.C. 7:15-5.24(e) through (h). Pursuant to N.J.A.C. 7:8-5.5(h), a 300-foot buffer is applied to both sides of a stream measured from the top of bank of an intermittent or perennial stream, or centerline if the bank is not defined, and from the defined edge of a lake, pond, or reservoir at bank-full flow or level. Category One waters 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. Riparian zones or buffers are established along all surface waters, based on the surface water body's classification designated at N.J.A.C. 7:9B, under the following regulations: the Flood Hazard Area Control Act rules (N.J.A.C. 7:13), the Stormwater Management rules (N.J.A.C. 7:38), and the 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 wetland pursuant to N.J.S.A. 13:9A-1 and 13:9B-25 are not included in the adopted SSA, except as provided under N.J.A.C. 7:15-5.24(e) through (h).

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

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

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

The notice of this amendment proposal was published in the New Jersey Register on January 7, 2012, at 45 N.J.R. 63(a). A public hearing was held on February 27, 2013, at the William E. Sturm, Jr. Administration Building, Cape May Court House. The Department and the Cape May 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 public comment period ended on March 14, 2013. The following people submitted comments on this amendment:

**Number – Commenter Name, Affiliation**

1. South Jersey Bayshore Coalition – represented by Sandy Batty, Francis Rapa, Tim Dillingham, Lillian Armstrong, Jeff Tittel, David Pringle, Richard Bizub, Christine Nolan, Richard McNutt, Maya K. van Rossum
2. Timothy Touhey, New Jersey Builders Association
3. Dan Lockwood, Mayor, Middle Township
4. Douglas Burke, on behalf of the Burke Family, property owner, Middle Township
5. Jeff Tittel, Sierra Club, New Jersey Chapter
6. Vilma Pombo, Middle Township Resident
7. Andrew A. Previti, P.E, Sea Isle City Engineer
8. Louis DeLosso, Middle Township Business Owner
9. Carlton Montgomery, Pinelands Preservation Alliance

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 commenters believe that the map under consideration provides insufficient information to evaluate or justify approval. The WQM Planning Rules require that WMPs, including SSA maps, provide substantial information to justify each plan. The Department proposes to approve revised SSAs in isolation from any such information. This lack of information makes it impossible for the public to evaluate the maps. (1, 9)

**2. Comment:** The commenter feels that the Cape May County FWSA map should be amended so that the legend reads existing or proposed "future wastewater service areas" and not existing or proposed "sewer service areas." The former includes areas to be served by both sewers and septic systems, while the latter includes only sewers. (1)

**Response to Comments 1-2:** The Cape May County FWSA map was prepared and submitted pursuant to P.L. 2011, c. 203, enacted January 17, 2012, which permits the wastewater management planning agency to prepare and submit to the Department at least that portion of a WMP designating SSA, which shall comply with the Department's regulatory criteria. Pursuant to P.L. 2011, c. 203, the Department implemented a phased approach to comprehensive WMP planning. The Cape May County FWSA Map is "that portion of a WMP designating SSA" pursuant to P.L. 2011, c. 203. As described in the proposal, the FWSA map was prepared in accordance with N.J.A.C. 7:15-5.24, which governs the delineation of SSAs. The FWSA map is only one element of a WMP; it is not a complete WMP. As such, the FWSA map was not subject to the complete comprehensive planning set forth in N.J.A.C. 7:15. The development and adoption of the FWSA map is the first phase of comprehensive wastewater management

planning. N.J.A.C. 7:15 requires Cape May County to ultimately complete and submit a comprehensive WMP.

The information on the Cape May County FWSA Map is generally consistent with written guidance provided to Cape May County and other WMP agencies detailing FWSA Map submittal and mapping requirements. These requirements are consistent with the WQM Planning rules. However, the Department acknowledges that the legend on the Cape May map can be interpreted as including areas to be served by septic systems within the proposed SSA. The areas that were proposed for sewer service do not include septic areas. The Department has asked the County to modify the legend so that it correctly reflects that septic areas are not within the SSA.

**3. Comment:** The commenter appreciates the availability of individual Cape May County municipal FWSA maps, but recommends that an overall county-wide map should also be made available. (2)

**Response:** Cape May County submitted both municipal FWSA maps and a county-wide FWSA map to the Department as part of this amendment. Both the county-wide map and the municipal maps, along with all information pertaining to the amendment, were available for inspection at the Department, Division of Coastal and Land Use Planning, 401 East State Street, Trenton, NJ, upon request to the Department, as stated in the notice of proposal of this amendment. Cape May County provided the municipal maps, rather than the county-wide map, on its website to assist property owners in determining whether the amendment impacted their property and in commenting on the proposed amendment.

**4. Comment:** The commenter asserts that there is an absence of environmental capacity-based planning in the proposed amendment and the preparation of the FWSA, which is inconsistent with the Department's Office of Planning and Sustainable Communities website, which the commenter quotes as saying that "environmental capacity-based planning recognizes both the environmental limits and opportunities for growth. Environmental limits include drinking water



and available sewer service capacity. Opportunities include the redevelopment of brownfield sites, the preservation of open space and natural resources including rare plant and animal species and representative ecological communities.” Additionally, the commenter asserts that the amendment ignores regional activities that may have significant environmental impacts on water quantity and quality. For example, much of Cape May County relies on confined aquifers that cross county borders. The combined withdrawals from these aquifers are leading to saltwater intrusion in the wells closest to the saltfront, streamflow depletion, wetland dewatering, and impairment to natural resources. These impacts were not evaluated. Alternatively, watersheds often cross county borders. Activities in watersheds upstream or upgradient of the county border can lead to water quality degradation in the county undergoing an amendment to its WQM Plan or FWSA. (1)

**Response:** The Department has accepted the Cape May County FWSA map in accordance with P.L. 2011, c. 203, which permits the wastewater management planning agency to prepare and submit to the Department at least that portion of a WMP designating SSA, which shall comply with the Department’s regulatory criteria. The FWSA map is not a complete WMP and has not been the subject of a comprehensive planning process. P.L. 2011, c. 203, expires on January 17, 2014, and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15. Completion of the full Cape May County WMP requires a buildout analysis of the adopted FWSA and a demonstration that water supply needs are met in accordance with the requirements set forth in N.J.A.C. 7:15. Additionally, the rules establish a process for the development of county WMPs that are a critical element of the Department’s water resource protection program and intended to achieve all established water quality standards and regulatory criteria. The rules contain key provisions that assist in the Department’s ability to plan holistically to accomplish this mandate and provide a sound basis for permit decisions. Capacity-based planning and analysis of future wastewater treatment and water supply needs for Cape May County are part of the remaining WMP planning, required by the rules. The completed WMP is required to include a buildout projection and calculation of the future wastewater and water supply needs to sustain development. These projections will be compared

to available capacity, and where existing capacity is insufficient, the WMP is required to identify measures that must be implemented to ensure that those needs can and will be met.

**5. Comment:** The commenter asserts that “some towns and agencies have not yet submitted updated wastewater proposals to Cape May County, or that recent updates were not available for review at the [Department]. This precluded [the commenter] from conducting an adequate environmental review of the amendment to the Cape May County WQMP/FWSA.” (1)

**Response:** Cape May County’s FWSA map was prepared and submitted pursuant to P.L. 2011, c. 203, enacted January 17, 2012. This legislation required the County to submit the FWSA map to the Department within 180 days of its enactment (on or before July 15, 2012). All municipalities in Cape May County participated in the process in a timely manner by submitting maps, plans and other materials to the Cape May County Planning Department enabling the County to submit the FWSA map on July 13, 2012. Both the county-wide map and the municipal maps, along with all information pertaining to the amendment, were available for inspection at the Department, Division of Coastal and Land Use Planning, 401 East State Street, Trenton, NJ, upon request to the Department, as stated in the notice of proposal of this amendment.

**6. Comment:** The commenter asserts that there is significant financial investment in Cape May County in an area vulnerable to future hurricanes. During Hurricane Sandy, storm surge elevations were as high as nine feet above ground level in Monmouth and Middlesex County. It is estimated that repairs to wastewater and sewer services in the storm-ravished sections of New Jersey will cost about \$3 billion (Asbury Park Press, February 12, 2013). Although the surge caused ocean water to rise only two to four feet in Cape May County, the commenter asserts that there would be significant damage to infrastructure. At this point, there has been no evaluation of whether this is a wise investment to the residents of New Jersey. (1)

**7. Comment:** The commenter states that the proposed SSAs do not reflect the changes that are occurring with storm surges and sea level rise or address the expanded flood zones and elevations in the Federal Emergency Management Agency’s new FEMA maps and Rutgers

studies. The commenter asserts that new sewer lines should not be put into areas that are vulnerable to storm surges and sea level rise which mean people will also be put in harm's way, risking life and property. The commenter also believes, based on the Governor's Emergency Order adopting the FEMA maps into Flood Hazard Area regulations, those areas should be removed from sewer service. The Water Quality Plans themselves should be put on hold until the FEMA maps are updated and those vulnerable areas are removed from future wastewater service. The commenter further states that sea level rise will contribute to salt water intrusion and must be considered in the updated county plans and that Freshwater wetlands are already turning brackish in Cape May. The WQM Plan should include adaptation and mitigation for sea level rise. (5)

**Response to Comments 6-7:** These comments are beyond the scope of this proposed amendment. The impacts of weather and climate on flooding and salt water intrusion are a state-wide planning issue that is beyond the scope of wastewater planning in Cape May. The purpose of the WQM Planning rules is to integrate various levels of government in the wastewater planning process and encourage growth and development in areas where infrastructure exists and that are not environmentally constrained. The WQM Planning rules do not remove FEMA mapped floodplains from SSA. The concerns raised by the commenter would be addressed by the technical permit reviews of other Department programs, such as the Flood Hazard Area rules at N.J.A.C. 7:13 and the Coastal Zone Management rules at N.J.A.C. 7:7E and/or by the programs of other municipal, county, and State agencies.

**8. Comment:** The commenter asserts that there are antiquated water and sewer systems in Cape May County. Many of Cape May County's water and wastewater infrastructure is decades old. Consequently, water distribution systems have unacceptable leaks, and wastewater collection systems experience substantial infiltration/inflow (I/I). These conditions contribute to the County's water supply problems by prematurely dewatering its aquifers. Millions of gallons of water are lost as a result. (1)

**Response:** The Department acknowledges that the age and condition of infrastructure is an ongoing concern in Cape May County; however, this comment goes beyond the scope of the proposed amendment. A comprehensive WMP that includes a capacity analysis that will quantify I/I amounts has not been proposed at this time. Furthermore, the regulation of significant I/I problems identified at wastewater treatment plants is managed by the Department's Division of Water Quality's Bureau of Construction and Connection Permits which, pursuant to N.J.A.C. 7:14A-22.16, requires a wastewater treatment plant that is at or above 80% capacity and that has identified significant I/I problems to submit a Capacity Assurance Program (CAP) in order to prevent an overloading of the facility or a violation of its NJ Pollutant Discharge Elimination System (NJPDES) permit. The CAP addresses how the municipal utilities authority/sewerage authority and/or municipality will address the excess I/I issue.

**9. Comment:** The commenter notes that the Sierra Club has designated Cape May and the Delaware Bayshore as one of the 50 most threatened places in the United States due to development pressures on the unique and environmentally sensitive ecosystems. The commenter believes the Cape May County WMP in its current form will accelerate sprawl and overdevelopment and will cause serious impacts not only to the ecosystem but to the natural system that protects the cape from flooding and storm surge. Based on our outlined concerns we urge the Department to reject the Cape May County plan until significant changes are made. (5)

**10. Comment:** The commenter states that Lower Township is an incredibly important "stopover" and breeding area for migratory birds. The land is bordered on the East and the West by the Atlantic Ocean and the Delaware Bay, which funnels avian species to this land, which they depend upon for food and protection. Threatened and Endangered avian and reptile species are documented in many areas of Lower Township, and no FWSA should be approved in these areas. Any water quality concerns in these areas can be remediated with an on-site disposal system which returns water to the aquifer. (1)

**Response to Comments 9-10:** The Department acknowledges these comments and agrees that this region of New Jersey contains exceptional natural resources. As stated above in this notice, in accordance with N.J.A.C. 7:15-5.24(b)1, the Department utilized the Division of Fish and Wildlife's Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, version 2.1, 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 species are not included in the adopted SSA. Additional protections of Threatened and Endangered species habitat may be addressed by the technical permit reviews of other Department programs (i.e. coastal, wetlands and stream encroachment permits) and/or by the programs of other municipal, county, and State agencies.

**11. Comment:** The commenter believes that centers have been wrongly extended to allow for more intensive development. Bigger is not always better. Most of the lands in Swainton Village in Middle Township that are considered environs have already been approved for one acre subdivisions and are now "grandfathered" with the latest master plan revision. All of this development will require more potable water allocations. (6)

**Response:** The centers that were created in Middle Township are part of an endorsed plan that has been approved by the State Planning Commission. They are also the result of a collaborative process between the Township and State agencies. The Township developed a comprehensive master plan, zoning ordinance and development regulations that promote center-based development as well as measures that protect the environs of the Township.

**12. Comment:** The commenter states that some counties have provided an acreage analysis of the existing SSAs compared to the future area, and encourages Cape May County to also share such information, which would enable the public to better assess the impacts of the proposed (or adopted) FWSA mapping. (2)

**Response:** P.L. 2011, c. 203, expires on January 17, 2014, and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing regulations require that full county-wide WMP

updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15. The analyses proscribed by N.J.A.C. 7:15-5.25(c), (e), and (f) include quantification of acreages both inside and outside of the SSA; therefore, such information will be provided as a part of Cape May's full County-wide WMP. However, the Department notes that providing an acreage analysis is not required by the WQM Planning rules.

**13. Comment:** The commenter appreciates the inclusion of the required "Notes" on the municipal maps, as they are an important source of insight into the County's decision-making.  
(2)

**Response:** The Department acknowledges this comment.

**14. Comment:** The commenter believes that land use planning decisions and local objectives should drive where we want to grow. In that regard, the commenter appreciates the inclusion of designated centers within the SSAs. For example, it is appropriate that the town center in Cape May is fully within the SSA. However, in the case of North Wildwood, it appears that portions of the area designated as being within the center boundaries are outside of the SSA for the Wildwood/Lower Regional Wastewater Treatment Plant. If this is the case, then the Department should provide a rationale as to why areas defined as centers have been excluded from the SSA.  
(2)

**Response:** The Department acknowledges the comment about Cape May City. Regarding North Wildwood, the commenter is referring to the boundary of the designated Wildwoods Regional Center on the FWSA that was delineated in 1998 when the Wildwoods Regional Center was approved by the State Planning Commission. This boundary appears to be based largely on the municipal boundary of North Wildwood and was delineated prior to the use of GIS-based mapping and detailed environmental data that the Department has developed and currently uses. The boundary includes water features, wetlands, beaches, and dunes. Pursuant to N.J.A.C. 7:15-5.24, these environmental features may not be included in SSA. The proposed SSA for North Wildwood was delineated in a cooperative effort between the Department, Cape May County,

and North Wildwood, and includes all developed and developable lands. The proposed SSA for North Wildwood was approved by the City of North Wildwood in a resolution dated January 15, 2013.

**15. Comment:** The commenter is concerned about how the Department will review and process development or activity on septic systems, particularly given the significant areas slated as dependent on septic. The commenter points to prior comment letters on other proposed WQM plan amendments wherein the commenter has expressed concerns about the Department's usage of a watershed based-nitrate dilution model to calculate lot density rather than the site specific approach that is currently used in the New Jersey Pinelands. The commenter asserts that the Department's response to this issue in prior adoption notices is entirely inadequate. Further, given that most counties have submitted their FWSA maps by this point, it is entirely necessary that the Department should give greater consideration for the expressed ramifications of the nitrate dilution modeling. The commenter strongly encourages the Department to revisit its approach. (2)

**Response:** As the Recharge-Based Hydrologic Unit Code (HUC) 11-Scale Nitrate Carrying Capacity Planning Tool model was not used in the delineation of the SSA, this comment goes beyond the scope of this proposed amendment. A full WMP, which must include a septic density analysis on a HUC 11 basis, where the model is appropriately used, has not been submitted to the Department at this time. However, the Department has previously responded to similar comments submitted in response to its May 21, 2007, proposal of the WQM Planning rules (N.J.A.C. 7:15). For the specific responses to the comments regarding applicability of the Recharge-Based HUC 11-Scale Nitrate Carrying Capacity Planning Tool model in conducting a HUC-11 septic density analysis as part of completing a WMP, the commenter may refer to the adopted rule notice published in the New Jersey Register on July 7, 2008, at 40 N.J.R. 4000(a). Furthermore, changes to the Department's nitrate dilution model would require appropriate rulemaking. The Department will take the commenter's concerns and suggestions regarding the nitrate dilution model into consideration as the Department assesses its rulemaking priorities.

**16. Comment:** The commenter raises concerns about what changes may be made to the proposed FWSA mapping. The commenter recommends that the Department more clearly and simply explain the distinctions between “technical/administrative corrections or modifications” and “substantial changes” for the lay property owner who may not have engineering consultants and attorneys on hand. The commenter asserts that most people had understood that the public hearing and comment process would be the vehicle through which properties may be brought to the attention of the Department and the local governments for reevaluation and then (hopefully) inclusion within future sewer areas. The commenter is aware of a number of incidences where properties and projects have evident support of both the local and county governments to be included in the sewer area because inclusion is aligned with planning objectives and goals, and supporting documentation was submitted to the Department and WMP agency, but they now must undergo another regulatory process, i.e. the site specific amendment or revision process. This seems to be an incredible and, from the commenter’s perspective, unnecessary expenditure of time, resources (both for the property owner and governmental staff), and monies. (2)

**Response:** The Department has consistently explained, as it did above in this notice, and in all previous adoptions of FWSA mapping, that upon review of the comments requesting to modify the WMP and/or the SSA, the Department could adopt the amendment only with minor changes pursuant to N.J.A.C. 7:15-3.4(g)9ii. These minor changes, defined as technical/administrative corrections or modifications, are those which do not effectively destroy the value of the public notice of the proposed amendment. Typical examples of technical/administrative corrections include, but are not limited to, inclusion of a property that is currently connected to a sewer system but was inadvertently omitted from the SSA or correcting the misidentification of a property in one service area when it is currently served by another.

The Department has determined that substantial changes are those changes to the proposed amendment which 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 SSA mapping and/or the way in which properties would be affected by the adopted WMP would be considered substantial. The Department evaluated whether a change was substantial or not on a case by case basis. Each potential change determination was fact sensitive and it would be unreasonably burdensome to explain the reasoning for each and every circumstance here. An explanation for each determination was provided on a comment by comment basis.

Since amendments to N.J.A.C. 7:15 were adopted in 2008, there have been multiple opportunities for interested persons to provide comments and requests for changes to SSA mapping, including opportunities provided under AO #2010-3, which ordered additional steps to be taken to encourage public engagement with the Department in addition to the formal amendment and revision procedures under N.J.A.C. 7:15. Pursuant to AO #2010-03 a public meeting was held on the draft Cape May County SSA mapping on April 6, 2011. The draft wastewater service area map was published on the Department's website prior to the public meeting. Under AO #2010-03, the public was invited to submit written requests to the Department on the draft SSA.

Comments were received based on AO #2010-3. Where it was identified that additional information was needed to make a determination whether a given request for a change in sewer service for a property was compliant with N.J.A.C. 7:15, the Department provided detailed guidance on the information and steps that would be necessary to designate a given property as within SSA. Comments were received based on AO #2010-3, and changes compliant with N.J.A.C. 7:15 were made at that time and included in the proposed Cape May County FWSA map. This AO #2010-03 public comment process was in addition to and occurred prior to the formal publication of the proposal notice of the Cape May County FWSA map in the New Jersey Register and the Department's final decision making process at N.J.A.C. 7:15-3.4(g)9. Given the improvement to outdated wastewater management planning documents that has been achieved through extensive public comment and work at the State, County and local agency levels, the Department determined that adoption of proposed improvements was warranted and that future

substantive changes could be made through the amendment process as authorized by N.J.A.C. 7:15 and P.L. 2011, c. 203, as appropriate.

After an amendment has been proposed, as is the case here, the Department may exercise options under N.J.A.C. 7:15-3.4(g)8 or (g)9. N.J.A.C. 7:15-3.4(g)8 articulates the Department's discretionary options when any data, information or arguments are submitted during the public comment period or in response to a request for written statement of consent appear to raise substantial new questions concerning a proposed plan amendment to be the following:

1. Reopen or extend the public comment period for no more than 30 additional days to give interested persons an opportunity to comment on new information or arguments submitted;
2. Disapprove the proposed amendment and, where applicable, return it to the applicant;
3. Return the amendment request to the applicant for necessary, substantial changes. If the applicant submits a revised request, the Department shall proceed to review the request pursuant to N.J.A.C. 7:15-3.4(g)2; or
4. Prepare a new proposed plan amendment, appropriately modified, for proposal under this section.

N.J.A.C. 7:15-3.4(g)9 provides the Department's decision-making options after the notice for any proposed amendment, whether proposed by the Department or not, has been published in the New Jersey Register, opportunity for comment has been provided, and the amendment has not already been disapproved or returned pursuant to N.J.A.C. 7:15-3.4(g)8. The Department can only adopt an amendment as proposed, adopt a proposed amendment with minor changes that do not effectively destroy the value of the public notice, or disapprove the amendment after it has been through an inclusive review process that includes consideration of any comments received on the proposal. See also 40 N.J.R. 4000(a) (July 7, 2008) (cmts. 362 & 363). Making 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.

Finally, P.L. 2011, c. 203, also provided property owners the opportunity to seek site specific amendments following the submission of that portion of a WMP designating a SSA pursuant to the act.

**17. Comment:** The commenter is concerned that the Department and the counties will be inundated with applications for site-specific amendments and revisions following the adoption of the FWSA maps. The commenter states that its members' experiences with the site specific amendment and revision processes have not been positive, and in fact the process has been very costly, resource intensive, and time delayed. The commenter strongly urges the Department and Cape May County to ensure that there is adequate staffing in place so that the timeframes and review process set forth in sections 6-8 of the 2011 Water Quality Management Plan law are followed. Further, the commenter would appreciate the Department's reexamination of the existing site specific amendment and revision processes so that efficiencies can be added while regulatory requirements are satisfied. (2)

**Response:** The Department fully intends to adhere to the specific review timeframes as required by law. The Department will take the commenter's concerns and suggestions regarding the existing site specific amendment and revision processes into consideration as the Department assesses its rulemaking priorities.

**18. Comment:** The commenter states that Middle Township does not consent to the proposed amendment to the Cape May County WQM Plan. The Township has identified more than 150 properties that are currently in the SSA and are proposed to be removed. There are dozens of mapping errors including properties that have existing sewer producing structures, as well as parcels that are within the Plan Endorsed Centers. (3)

**Response:** The centers in Middle Township are the result of a collaborative planning process between Middle Township and State agencies, and are part of an endorsed plan that has been approved by the State Planning Commission. The SSAs delineated on the adopted FWSA are

coterminous with the boundaries of the designated centers. The Department acknowledges that several properties within the designated centers are developed with sewer-producing structures that were omitted from the FWSA. The Department has determined that these properties, as they are already connected, can be designated in SSA upon adoption of this amendment. The following properties have been determined to be existing sewer-producing structures to be included in the FWSA: Block 117.04, Lots 4, 22, and 23; Block 310, Lot 12; Block 389, Lot 16.02; and Block 466.01, Lots 10.01 and 10.02.

The Department will work with Middle Township to include additional properties within the designated centers through the plan endorsement process, and the WQM Planning rules amendment process, in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable.

**19. Comment:** The commenter states that the SSA delineation on Block 132.01, Lot 28, in Middle Township excludes a portion of the property that was intended by the State and the Township to be developed and built upon in accordance with the Township's Master Plan. The entire property was intended to be part of the designated center in Middle Township's endorsed plan, but when it was adopted by the State Planning Commission, part of the property was excluded. The Department had previously approved this portion of the property as being buildable and developable. (4)

**Response:** The SSAs delineated on the adopted FWSA are coterminous with the boundaries of the designated centers. The Department acknowledges that the entire property was previously in an approved SSA; however, since 2008, the WQM Planning rules at N.J.A.C. 7:15-5.24 prohibit the delineation of SSA in certain coastal planning areas, including the Coastal Fringe Planning Area. See N.J.A.C. 7:15-5.24(c). Consequently, the portion of the subject property within the Coastal Fringe Planning Area must be excluded from the SSA.

**20. Comment:** The commenter has owned property at 414 Garden State Parkway at Block 132.01, Lot 11, since 1986. It consists of approximately 4.96 acres and is currently served by a septic system. Construction work undertaken by the Parkway Authority is requiring the

relocation of a force main from the pumping station at Stone Harbor Boulevard and the Parkway. The commenter asks that his property, the new residential community to the north, and the residential community off of Schooner Landing Road be included in the SSA. (8)

**Response:** This property identified by the commenter is in a Coastal Fringe Planning Area. The WQM Planning rules at N.J.A.C. 7:15-5.24(c) prohibit the delineation of SSA in certain coastal planning areas, including the Coastal Fringe Planning Area. Therefore, the property cannot be included in the SSA.

**21. Comment:** The commenter believes that the Pier 47 Inc. Property at Block 1526, Lot 1, and Block 793, Lot 21, off Route 47 in Middle Township should be removed from the FWSA. The NJDEP 2007 Wetlands Database indicates that this area is saline marsh wetlands. (1)

**Response:** As indicated by the Department in an April 4, 2011, letter to Pier 47 Marina's owner, the Department, in accordance with AO #2010-3 signed by Commissioner Martin, "supports the inclusion of only the [marina's] currently existing sewage generating structures and uses into the sewer service area." However, while the proposed map included in SSA the existing sewage generating structures, it also inadvertently included approximately 2 acres of undeveloped wetlands in the SSA. Because removing the two acres of wetland areas from SSA would constitute a substantial change to the FWSA map, the Department cannot make this change upon adoption. As noted previously, substantial changes cannot be made upon adoption without prior public notice. Substantial changes include those changes to the proposed amendment which the Department has determined would enlarge or curtail who and what will be affected by the proposed amendment, change what is being prescribed, proscribed, or otherwise mandated by the proposed amendment, or enlarge or curtail the scope of the proposed amendment and its burden on those affected by it. Thus, changes which would enlarge or curtail which properties would be affected by the adopted FWSA map and/or the way in which properties would be affected by the adopted FWSA map would be considered substantial. Making such substantial changes on adoption would effectively destroy the value of the public notice and, thus, a new notice and

public comment period are required prior to consideration of such changes pursuant to the process set forth in N.J.A.C. 7:15-3.4.

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

**22. Comment:** The commenter believes that the following areas in Cape May Court House should be removed from the FWSA:

- West of Honeysuckle Lane and Route 620, North of Route 618, South of Sound Drive: The commenter asserts that the Department's Landscape Project Database Version 3.1 identifies State Threatened and Endangered Species Habitat Rank 4 for State endangered Eastern Tiger Salamander and Cope's Gray Treefrog and State Threatened Barred Owl. The NJDEP 2007 Wetlands Database indicates that this area is coniferous wooded wetlands. The habitats of these species are protected in New Jersey. State documents indicate that pool-breeding amphibian species travel distances ranging from 400 to 4,000 feet from vernal pools to surrounding terrestrial upland habitat. Since several vernal pools harboring documented State Endangered amphibians occur adjacent to the site, there is a very high likelihood that protected species both occur on and utilize the property.
- Block 56.01, Lot 46: The commenter asserts that the Department's Landscape Project Database Versions 3.1 identifies State Threatened and Endangered Species Habitat Rank 4 for State Endangered Eastern Tiger Salamander and Cope's Gray Treefrog and State Threatened Barred Owl and Cattle Egret. This property is entirely within the Cape May National Wildlife Refuge acquisition boundaries and almost completely surrounded by Refuge-owned land. The US Fish and Wildlife Service's Comprehensive Conservation Plan (CCP) completed in 2004 states that "there are 12 listed species in and around Cape May Refuge that are federally-listed endangered and threatened," and that "there is a strong potential for their occurrence on lands currently owned by the Refuge, or proposed for

acquisition.” Further, according to the Department’s Landscape Project Vernal Habitat Database, there are at least three state-certified vernal pool wetland habitats adjacent to this property on the adjoining Refuge-lands. (1)

**23. Comment:** The commenter believes that the forested area between the Garden State Parkway South and Route 9, along Lena St. and Waccamaw Street in Whitesboro, Middle Township, should be removed from the FWSA. The Department’s Landscape Project Database Version 3.1 identifies State Threatened and Endangered Species Habitat Rank 4 for State Endangered Eastern Tiger Salamander and State Threatened Barred Owl. Additionally, NJDEP 2007 Wetlands Database indicates that this area is deciduous wooded wetlands. This area includes Block 1464, Lots 16, 18, 19, 21, 22, 23, 26, 27 and 29. (1)

**Response to Comments 22-23:** Middle Township has an endorsed plan approved by the State Planning Commission. The areas identified by the commenter are within the designated centers of Cape May Court House Regional Center and the Rio Grande-Whitesboro-Burleigh Regional Center in Middle Township’s endorsed plan. The WQM Planning rules at N.J.A.C. 7:15-5.24(h) allow the inclusion of ESAs within designated centers provided certain conditions are met. The Department has reviewed Middle Township’s endorsed plan and has determined that these conditions have been met.

**24. Comment:** The commenter believes that the following areas in Lower Township should be removed from the FWSA:

- North of Tabernacle/Fishing Creek Road, adjacent to Lennox Avenue and east to Route 9: The commenter states that this area is located in a Habitat Rank 4 Forest Area (Deciduous Brush Scrubland) and contains Natural Heritage Priority Areas, is a Raptor Winter Concentration Area and that species of special concern (Kentucky Warbler, Brown Thrasher) and State endangered species (Bald Eagle, Cope’s Gray Tree Frog, Eastern Tiger Salamander) reside in this area.

- Areas adjacent to and east of Route 9, and Erma Park: these areas are located adjacent to the Cape May National Wildlife Refuge, coastal wetlands, and Taylor Creek. The Department's Landscape maps, Version 3.1, show this as Rank 4 Habitat with the following species of special concern: Wood Thrush, Little Blue Heron, Tricolored Heron, Glossy Ibis & Snowy Egret; and State threatened species: Black-crowned Night Heron, Yellow-crowned Night Heron, and Cattle Egret. (1)

**Response:** Cape May County's proposed FWSA map was submitted to the Department for review prior to the release of Landscape Project Version 3.1. The Cape May County Planning Department utilized the Landscape Project mapping available at the time, which was Version 2.1, when completing the wastewater service area delineation. As noted in the proposal notice for this amendment, the Department utilized Version 2.1 while reviewing this amendment. Consequently, areas identified as ESA only under Version 2.1 have been excluded from SSA in accordance with N.J.A.C. 7:15-5.24 upon adoption of this amendment.

The area north of Tabernacle/Fishing Creek Road, adjacent to Lennox Avenue and east of Route 9 includes existing residential subdivisions and commercial properties in SSA and excludes from SSA vacant lands that are considered habitat of endangered and threatened species according to the Department's Landscape Project Version 2.1. In the area adjacent to and east of Route 9 and Erma Park, the FWSA includes in SSA existing residential and commercial properties along Route 9 and the post-war residential subdivision of Erma Park. The portions of this area designated as habitat for endangered and threatened species according to the Department's Landscape Project Version 2.1 have also been excluded from the SSA.

Any party may submit an application to the Department for a site specific amendment or revision, as applicable, to a WQM Plan to include or exclude additional areas and/or facilities in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable. The Department's review will utilize the most current Landscape Project version available at the time the amendment or revision application is submitted.



**25. Comment:** The commenter states that Sea Isle City had previously requested that developed properties north of 22nd Street and Landis Avenue be included in the FWSA. The FWSA as proposed does not include these areas. These properties have existing homes on them and are not environmentally sensitive, and exclusion will prevent them from becoming customers of the Cape May County Municipal Utilities Authority (CMCMUA) and will deprive owners of the benefits of adequate wastewater treatment for the effluent generated by these developed properties. These developed properties are currently serviced by on-site wastewater disposal systems which are not efficient during times of coastal storm events which could result in flooding conditions. The commenter believes that all developed properties in the City, including those north of 22nd Street should be served by modern wastewater collections systems. The exclusion of these properties would not be in the best interest of the City or property owners, nor would it serve the interests of public safety, health and welfare. (7)

**Response:** The area of Sea Isle City north of 22nd Street and Landis Avenue north to the municipal boundary that includes developed properties is in a Coastal Environmentally Sensitive Planning Area. The WQM Planning Rules at N.J.A.C. 7:15-5.24(c) prohibit the delineation of SSA in certain coastal planning areas, including Coastal Environmentally Sensitive Planning Areas.

**26. Comment:** The commenter states that proposed CAFRA Centers and Pinelands Villages and Towns in Dennis Township should not include in SSA areas identified as ESAs. Areas such as extensive wetlands and critical habitat for threatened and endangered species should not be mapped as future SSA. Examples of critical habitat within Dennis Township CAFRA Centers that should be excluded from the future SSAs include the portions of Dennisville northeast of the railroad line and South of Delsea Drive (State Highway 47), as well as parts of South Dennis and South Seaville documented as habitat for State-endangered red-shouldered hawk (breeding) and Eastern tiger salamander. Widespread portions of Woodbine, mapped as proposed SSA, are constrained by wetlands and feature vast contiguous tracts of Rank 3 and 4 critical habitat. This includes critical habitat of Pine Barrens tree frogs, Cope's gray treefrog, barred owl, red-headed woodpecker, and northern pine snake, among other species. These must be excluded in

compliance with the WQM Planning rules. Similarly, the Pinelands Villages of Eldora and Belleplain also feature critical habitat within proposed SSAs. (1)

**Response:** Dennis Township has an endorsed plan approved by the State Planning Commission. The areas identified by the commenter are within the designated centers of Dennis Township's endorsed plan. The WQM Planning rules at N.J.A.C. 7:15-5.24(h) provide that SSAs may include ESAs within designated centers provided certain conditions are met. The Department has reviewed Dennis Township's endorsed plan and has determined that these conditions have been met. The Township's efforts include a revised master plan and zoning ordinance that establishes compact center-based development, limits development densities and lot sizes outside of the centers in rural areas, identifies environmentally sensitive lands, and implements resource protection ordinances that limit impacts on ESAs.

Per the terms of the MOU with the Pinelands Commission, as discussed above, the Department has not removed ESAs, as defined at N.J.A.C. 7:15-5.24(b), from Pinelands Town, Pinelands Village, Regional Growth Area, substantially developed portions of a Military and Federal Installation Area or 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. The reasoning for this is explained more fully in the response to Comment 27 below.

**27. Comment:** The commenters oppose the inclusion of Pinelands Villages in SSA. Specifically, commenters claim that the MOU between the Pinelands Commission and the DEP does not provide a lawful basis to add Pinelands Villages to SSA; that there is no legal requirement that Pinelands Villages be in SSA; that Pinelands Villages lack infrastructure to support development and that such extension of infrastructure is not permitted; and that the inclusion of Pinelands Villages in SSA conflicts with certified zoning. The commenters also state that the Department does not have the authority to adopt maps that include environmentally sensitive areas in SSA. (1, 5, 9)

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

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

The Commission is charged under the PPA to determine the amount of human development and activity certain ecosystems within the Pinelands Area can sustain, while still maintaining overall ecological values thereof, with special reference to ground and surface water quality and endangered, unique and unusual plant and animals and biotic communities.. N.J.S.A. 13:18A-8(a)(1). Further, the PPA requires the CMP to include a land use capability map and statements

of policies for planning and managing development and land use which must consider a variety of land and water protection and management techniques, and regulate the use of land and water resources, among other things. The Commission distinguishes between nine management areas, eight established by N.J.A.C. 7:50-5.11 et seq., with Pinelands Villages and Towns treated as two separate management areas and displayed that way on the Pinelands Land Capability Map. Each management area is subject to different minimum standards for land use distribution and densities. N.J.A.C. 7:50-5.21 et seq. As such, the Commission has determined that certain areas are more compatible with growth and development than others.

Notably, the PPA also specifically requires the CMP to include: “in conjunction with existing State programs and planning processes, a plan to implement the provisions of the ‘Clean Water Act’ (P.L. 95-217) and the ‘Safe Drinking Water Act’ (P.L. 93-523) which pertain to the surface and ground water quality of the Pinelands National Reserve.” N.J.S.A. 13:18A-8(j). The water quality portions of the CMP, N.J.A.C. 7:50-6.81 – 6.88, are “intended to protect and preserve surface and ground waters of the Pinelands and to ensure that random and uncontrolled growth and development will not degrade the Pinelands environment.” N.J.A.C. 7:50-6.81. N.J.A.C. 7:15-3.7 of the WQM Planning Rules specifically requires the Department to coordinate with the Commission and requires the Department to obtain Commission comment in order to ensure WQM Plan amendments are consistent with the intent and programs of the Pinelands Protection Act. N.J.S.A. 13:18A-8 of the PPA also requires coordination and consistency with local, State, and Federal programs and policies in order to promote the goals and policies of the management plan.

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

Further, N.J.S.A. 13:18A-27 provides that in the event of any conflict or inconsistency between the provisions of the PPA and any rules and regulations promulgated under the PPA, which

includes the CMP, the provisions of the PPA and CMP shall be enforced and the conflicting or inconsistent provisions shall have no force and effect. See also N.J.S.A. 13:18A-10(c) (prohibiting any State approval, certificate, license, consent, permit or financial assistance authorizing development unless it conforms to the CMP).

In light of the above, and in recognition of the nature and scope of the Commission's planning, regulation and oversight of land use and development in the Pinelands Area and for purposes of implementing the WQM Planning Rules, N.J.A.C. 7:15, a MOU between the Department and the Commission was executed in April 2012 in which the Department recognizes the management area designations and boundaries established by the Commission within the Pinelands Area for purposes of delineating SSA. The MOU provides that all lands located within a Pinelands Village, Pinelands Town, Regional Growth Area, substantially developed portions of a Military and Federal Installation Area, and any other area designated by the Commission for the development of centralized waste water treatment and collection facilities pursuant to either N.J.A.C. 7:50-6.84(a)2 to address a public health problem or a memorandum of agreement pursuant to N.J.A.C. 7:50-4.52(c) of the CMP, as specified in GIS coverage provided by the Commission, shall be deemed to be within a SSA.

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

Pinelands Villages enables those municipalities to explore the option of constructing sewerage infrastructure and/or a sewage collection system, including package treatment plant.

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

Additionally, any proposed development of wastewater treatment works in the Pinelands is subject to the review and approval of the Pinelands Commission in accordance with the provisions of the CMP. And, should a municipality wish to increase permitted residential densities or the permitted intensity of non-residential development in their Pinelands Village zoning districts, such changes would require Commission review and approval to ensure that the zoning plan in the Pinelands Village is consistent with the CMP. The Department recognizes that pursuant to the CMP, a Pinelands Village zoning plan may not provide for an additional increment of development which is greater than the number of principal structures which existed in the Village in 1979. N.J.A.C. 7:50-5.16. The designation of Pinelands Villages within a FWSA enables municipalities to exercise the option of seeking to provide sewerage infrastructure, authorized by a CMP-consistent zoning change if necessary, or choosing to maintain the existing Commission certified zoning districts within their Pinelands Villages that would not necessitate the provision of the sewer service.

Per the terms of the MOU, and, again, in recognition of the nature and scope of the Commission's planning, regulation, and oversight of land use and development within the Pinelands Area, the Department has not removed ESAs, N.J.A.C. 7:15-5.24(b), from Regional

Growth Area, Pinelands Town, Pinelands Village, substantially developed portions of a Military and Federal Installation Area or any other area where the Commission has permitted the development of centralized wastewater treatment and collection facilities in accordance with N.J.A.C. 7:50-6.84(a)2 to address a public health problem or pursuant to a Memorandum of Agreement executed by the Commission in accordance with N.J.A.C. 7:50-4.52(c).

ESAs, as described at N.J.A.C. 7:15-5.24(b), are contiguous areas of 25 acres or larger consisting of areas of wetlands, threatened and endangered wildlife species habitat, Special Water Resource Protection Area buffers around designated Category 1 streams and/or Natural Heritage Priority Sites. All waterways within the Pinelands Protection and Preservation Area are designated as "PL" waters. These waters are subject to strict protections afforded by the requirements of the CMP. There are no designated Category 1 streams in the Pinelands Area and therefore no Special Water Resource Protection Area buffers within the Pinelands. Thus, this type of ESA is not present in the Pinelands.

Each of the remaining types of ESAs described at N.J.A.C. 7:15-5.24(b) occur within some portion of the lands located within a Pinelands Village, Pinelands Town, or Regional Growth Area. However, where an ESA may occur within a Pinelands Area SSA, the regulatory provisions of the CMP ensure such areas are adequately protected. Natural Heritage Priority Sites identify areas with populations of threatened and endangered flora and fauna. Within the Pinelands Area, Threatened and Endangered flora and fauna populations are specifically afforded regulatory protection. N.J.A.C. 7:50-6.33 provides that "No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of those threatened or endangered animal species designated by the Department of Environmental Protection pursuant to N.J.S.A. 23:2A- 1 et seq. N.J.A.C. 7:50-6.27 provides that "No development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of any local populations of those plants designated by the Department of Environmental Protection as endangered plant species pursuant to N.J.A.C. 7:5C-5.1 as well as the following plants, (see listing at N.J.A.C. 7:50-6.27) which are hereby found and declared to be threatened or endangered plants of the Pinelands." The

Commission's regulatory jurisdiction over the protection of Threatened and Endangered flora and fauna habitats applies to the development of any new sewage producing structure and would provide protection of the threatened and endangered species.

Wetlands are a vital component of the Pinelands ecosystem and transition areas to protect them have been in place since the CMP was adopted in 1980. The regulatory protections afforded to wetlands and transition areas adjacent to wetlands are specified at N.J.A.C. 7:50-61 et seq. The CMP notes at N.J.A.C. 7:50-6.6 that "development shall be prohibited in all wetlands and wetlands transition areas established pursuant to N.J.A.C. 7:50-6.14 in the Pinelands except as specifically authorized in this Part." In addition, the CMP provides at N.J.A.C. 7:50-6.14 that "No development, except for those uses which are specifically authorized in this subchapter, shall be carried out within 300 feet of any wetland, unless the applicant has demonstrated that the proposed development will not result in a significant adverse impact on the wetland, as set forth in N.J.A.C. 7:50-6.7."

Together, the aforementioned provisions of the CMP ensure that ESAs within a Pinelands Regional Growth Area, Pinelands Town, Pinelands Village, substantially developed portions of a Military and Federal Installation Area or any other area where the Commission has permitted the development of centralized wastewater treatment and collection facilities in accordance with N.J.A.C. 7:50-6.84(a)2 to address a public health problem will be subject to site specific review, evaluation and protection.

**28. Comment:** The commenter states that the WQM Planning rules require municipal agreement to expand SSA into Pinelands Villages, and several municipalities have not given such consent.  
(9)

**Response:** Department procedures for amendment of a WQM Plan are established at N.J.A.C. 7:15-3.4(g) and include, at N.J.A.C. 7:15-3.4(g)4i through iv and N.J.A.C. 7:15-3.4(d)3, requirements concerning written statements of consent. See also N.J.A.C. 7:15-5.22. After the Department identifies a list of parties, generally governing bodies, sewerage agencies, and sewer



and water utilities, that may be affected by, or otherwise have a substantial interest in, approval of the proposed amendment, the applicant is required to request, within 15 days, such affected parties to issue a written statement of consent for the proposed amendment within sixty days of receiving the request. N.J.A.C. 7:15-3.4(g)4i; N.J.A.C. 7:15-5.22(b). An affected party may issue a written statement of consent, which includes a statement that the party concurs with, or does not object to, the proposed amendment. N.J.A.C. 7:15-3.4(g)4ii. Tentative, preliminary, or conditional statements are not considered to be statements of consent. *Id.* The party may also object in writing to a proposed amendment and shall state all reasons for objection in writing. *Id.* If a party denies a request for written consent or does not issue a written statement of consent, if the reasons are known on the basis of reasonably reliable information, same shall be considered in decision making on the proposed amendment pursuant to N.J.A.C. 7:15-3.4(g)8 and (g)9. Pursuant to N.J.A.C. 7:15-3.4(g)8, the Department may decide whether to reopen or extend the public comment period, disapprove the proposed amendment, return the proposed amendment, or prepare a new proposed plan amendment, if any data, information or arguments submitted during the public comment or in response to a written statement of consent appear to raise substantial new questions. N.J.A.C. 7:15-3.4(g)4iv. Or, the Department may, pursuant to N.J.A.C. 7:15-3.4(g)9, adopt the amendment as proposed, adopt the amendment with minor changes, or disapprove the amendment. These procedures make it clear that though there is an obligation on the applicant to seek written statements of consent, the Department has the authority to proceed to final action without written statements of consent from each entity from which consent was requested once all information provided during the public comment and consent period has been considered by the Department.

The WQM Planning rules' requirements concerning written statements of consent were never intended to preclude an amendment from being adopted on the basis that not all affected entities, including municipalities, had provided a written statement of consent. In 1989, the Department explained the requirement that applicants request what were then called "endorsements" by affected parties. It was specifically noted that WQM Plan amendments could proceed even when requested endorsements, or, as they are called now, written statements of consent, were not obtained. See 21 N.J.R. 3099(a) (Oct. 2, 1989) at 3123-24 (cmts. 106 to 108) and at 3159-61

(N.J.A.C. 7:15-3.4(g)). See also 24 N.J.R. 344 (b) (Feb. 3, 1992) at 345, 349, and 372-73; 25 N.J.R. 547(a)(Feb. 1, 1993) at 578 (change from endorsement to consent). In the Department's most recent adoption of the WQM Planning rules, the Department explains again that, while the Department must consider the responses to written statements of consent including objections, the Department retains final decision making authority on amendments. See 40 N.J.R. 4000(a) (July 7, 2008) (cmts. 51, 347, 362-363, 454, and 653).

**29. Comment:** The commenter states that we need to stop wasting treated water and start putting it back into the aquifers for reuse in the years to come instead of dumping it into the salty ocean water where it becomes more salty water and will need expensive desalinization plants to purify it for potable water use in the future. (6)

**Response:** This comment goes beyond the scope of the proposed amendment; however, the Department acknowledges the comment and agrees that water conservation and reuse is important in Cape May County. The practice of reclaiming wastewater is being implemented on a small scale by the CCMUA. Also, the USGS "Future Water-Supply Scenarios, Cape May County, New Jersey 2003-2050" study under Scenario 6 evaluates injection of reclaimed water to create a saltwater barrier in the Cohansey aquifer.

**30. Comment:** The commenter believes that the Department's water supply and wastewater strategy in Cape May County is in conflict with its own laws, rules and policies. N.J.A.C. 7:19-6.1(a) of the Water Supply Management Act regulations states that "the Statewide Water Supply Master Plan represents the planning mechanism by which the State approaches its water needs. Inclusion of a project in the Master Plan is a prerequisite for the expenditure of funds under the Water Supply Bond Act of 1981." The commenter states that this provision is included in the Act to ensure both that proposed water supply and drinking water projects do not impair the waters of the State, and as an "incentive" to implement truly beneficial projects. (1)

**31. Comment:** The commenter asserts that there are major shortcomings in the New Jersey Integrated Water Quality Monitoring and Assessment Report (Integrated Report). Streamflow

depletion in Cape May County has been documented by the USGS as part of the Gibson Bill (USGS, 2009, page 128). Yet, the Integrated Report lists streamflow depletion as potentially problematic in only one out of fifty sub-watersheds (Bidwell Creek). The commenter asserts that significant streamflow depletion that results from excessive surface and ground water withdrawals may affect the designated uses of a sub-watershed as much, if not more than excessive pollutants. If a stream goes dry due to disproportionate withdrawals in its watershed, all of its designated uses are impaired. Without considering streamflow depletion in the watersheds of Cape May efforts to mitigate surface water quality problems can be unsuccessful, especially in cases where depletion is severe. Many stream reaches are likely to go dry, freshwater wetlands converted to brackish water wetlands, and aquatic resources severely degraded. Efforts to restore and maintain the designated uses of the County's watersheds may not succeed in the absence of assessing the effects of losses to streamflow and wetlands. (1)

**32. Comment:** The commenter asserts that the FWSA is inconsistent with the Surface Water Quality Standards. In the absence of comprehensive analysis, the proposed amendment to the Cape May County WQM Plan ignores the adverse impacts that the increase in water supply demand that would accompany the expansion of FWSAs and other modes of wastewater management would have upon the waters of Cape May County. The Surface Water Quality Standards (N.J.A.C. 7:9B) at N.J.A.C. 7:9B-1.5(a)6 stipulate that "existing uses shall be maintained and protected. Designated uses shall, as soon as technically and economically feasible, be attained wherever these uses are not precluded by natural conditions." The commenter maintains that substantial reductions in natural streamflow of the waters of Cape May County as a result of excessive surface and ground water withdrawals would potentially impair the designated uses of these waters or not allow the Department's antidegradation and nondegradation policies to be successfully implemented.

The commenter states that expanded wastewater infrastructure leads to dense development. Dense development, in turn, leads to higher water demands. Higher water demands, consecutively, lead to accelerated streamflow depletion and the consequent impacts discussed above. The highest water demands generally occur in the summer months, when outdoor water

use is highest due primarily to irrigation. In Cape May County, the demands are greatly exaggerated when summer tourists increase the population from about 100,000 to 600,000 (and one million on holiday weekends). Concurrently, evapo-transpiration is peaking during the summer months and streams are at their lowest flows. If precipitation is very low, streams are likely to flow at the 7Q10. Substantial withdrawals during this period can reduce the 7Q10, resulting in severe impacts to a stream's designated uses and water quality. Attaining and maintaining the designated uses have not been addressed by the proposed amendment to the Cape May County WQM Plan. (1)

**33. Comment:** The commenter asserts that the FWSA is inconsistent with the Ground Water Quality Standards. The Ground Water Quality Standards (N.J.A.C. 7:9C et seq.) establish the designated uses of the State's ground waters, classify ground waters based on those uses, and specify the water quality criteria and other policies and provisions necessary to attain those designated uses. The designated uses of ground water can be impaired by excessive well withdrawals from both a quantity and quality perspective. Freshwater wetlands along streams in the outcrop areas of confined aquifers can be converted to freshwater wetlands as confined aquifer wells increase pumpage. These withdrawals may also increase the concentrations of pollutants as freshwater dilution is reduced. The 2009 USGS report "Future Water-Supply Scenarios, Cape May County, New Jersey 2003-2050" analyzed the ground water declines in the water table aquifer that can exacerbate the above effects. Dozens of ground water discharges greater than 2,000 GPD and hundreds of septic systems of less than 2,000 GPD are being proposed in the watersheds of Cape May County. Their effects have not been addressed in the amendment to the WQM Plan/FWSA for Cape May County. (1)

**34. Comment:** The commenter asserts that the FWSA is inconsistent with P.L. 2001, Chapter 165 (the Gibson Bill). The Gibson Bill was enacted in 2001 to address the saltwater intrusion problem in Cape May County. This statute allocated \$2 million to the Department to prepare a report on sustainable water supply alternatives within Cape May County to meet its water supply needs while avoiding any adverse groundwater or ecological impacts. The statute also specified the Department may issue approvals or allocations for increased ground water withdrawals in

Cape May County only upon a finding that such new withdrawals will not accelerate salt water intrusion, lower existing stream base flow or harm ecological functions or wildlife. To date only 2 of the 6 assessments required of the statute have been completed by the Department. The commenter strongly recommends the proposed WQM Plan Amendment not proceed any further until all the initiatives mandated by its regulations and the Gibson Bill have been completed, and that the thresholds employed in the next water supply plan be utilized to determine water availability. The Department has been aware of the water supply problems for more than 50 years. Approval of the proposed plan will only worsen these problems. (1)

**35. Comment:** The commenter asserts that the proposed FWSA map is inconsistent with the Water Supply Management Act – Pinelands Provisions. N.J.S.A. 58:1A-7.1 (Transport of water from Pinelands National Reserve; prohibition) states that “the provisions of any law, rule or regulation to the contrary notwithstanding, no person shall transport, or cause to be transported, more than 10 miles outside the boundary of the Pinelands National Reserve, any ground or surface water therefrom; provided, however, that nothing in this section shall prohibit the continued transportation of any such water utilized for public water supply purposes prior to the effective date of this act.”

The USGS “Future Water-Supply Scenarios, Cape May County, New Jersey 2003-2050” study shows that water withdrawn from wells in the Atlantic City 800-foot sand, Rio Grande, and Cohansey aquifers in southern Cape May County are inducing water from their recharge areas within the Pinelands National Reserve, more than ten miles outside the boundary of the Pinelands National Reserve (USGS, 2009, pages 111 – 142). The commenter interprets the above statute to mean that these existing water allocations from wells in southern Cape May County may continue to transport water from the Reserve, but that increases in these allocations or new allocations that will transport (or cause to be transported) water more than ten miles outside the boundary of the Reserve are strictly prohibited.

Several of the water supply options being considered by the Department to meet Cape May County’s increasing demand would transport water more than 10 miles outside the boundary of

the Pinelands National Reserve. In addition, existing allocations, where the Department is not planning alternative water supplies but will need increases in their allocations, would transport water more than 10 miles outside the boundary of the Reserve.

Furthermore, the Gibson Bill states that “the Department of Environmental Protection shall, in cooperation with the United States Fish and Wildlife Service, the National Marine Fisheries Service and the United States Geological Survey (USGS), assess and prepare a report on sustainable water supply alternatives within Cape May County, but outside of the pinelands area, necessary to meet the current and future water supply needs of Cape May county while avoiding any adverse ground water or ecological impact on Cape May County.” In the commenter’s view , an alternative in Cape May County that induces water from the Pinelands Area should not be considered a water supply alternative for Cape May County.

The commenter believes that approval of the proposed amendment to the Cape May WQM Plan will significantly increase the need for alternative water supplies in Cape May County. Existing statutes prohibit some of the alternatives being considered. (1)

**36. Comment:** The commenter asserts that the FWSA will further the potential for saltwater intrusion faster than expected. If salty water is actually now reaching the Wildwood Water Utility (WWU) wells, it is quite possible that much of the predictions made by the USGS regarding saltwater intrusion in Cape May County are inaccurate. Many of the USGS’s predictions estimated that saltwater intrusion is decades and even hundreds of years off into the future. The status of the County’s water supply would be substantially more severe if the WWU wells are about to be seriously affected. History has shown that once the sodium/chloride saltwater front intrudes as far as the WWU well field, chloride concentrations in some wells may increase about 50 mg/L/yr., similar to the intrusion rate observed in former production wells that tapped the Cohansey aquifer in other parts of Cape May County. Model results indicate that without careful management, saltwater intrusion will render the water from all WWU production wells open to the Cohansey aquifer unfit for potable supply (unless desalinated) within a few

years of the intrusion into the first well (USGS "Future Water-Supply Scenarios, Cape May County, New Jersey 2003-2050" study, 2002, page 121). (1)

**37. Comment:** The commenter feels that the proposed FWSA is in conflict with P.L. 2011, c. 203, which requires that a FWSA or SSA comply with the Department's regulatory requirements of the 2008 WQM Planning Rules, N.J.A.C. 7:15. More specifically, P.L. 2011, c. 203 (4) states that "notwithstanding any other law, or rule or regulation adopted pursuant thereto, to the contrary, on or before the 180th day after the date of enactment of this act or such longer time as the commissioner may determine, each wastewater management planning agency, which has not submitted a wastewater management plan prior to the date of enactment of this act, shall prepare and submit to the department at least that portion of a wastewater management plan designating a sewer service area, which shall comply with the department's regulatory criteria. The department may adopt the entire plan or a portion thereof, and upon adoption, the plan or portion thereof shall take effect. Any preexisting sewer service area designation or wastewater service area designation shall remain in effect until such time as the department adopts the new plan or portion thereof establishing sewer service area designations or other wastewater service area designations, as the case may be."

As per N.J.A.C. 7:15, these regulatory criteria include such provisions and analyses as build-out capacity constraints, nitrate dilution, water supply needs and capacity analysis, etc. The commenter states that the Department acknowledges that these provisions have not yet been completed in its WMP Update. Since the regulatory criteria provisions have yet to be satisfied, the proposed Cape May County WQM Plan/FWSA cannot be approved. (1)

**38. Comment:** The commenter asserts that the mapping of SSAs does not reflect serious problems of salt water intrusion and the lowering of the aquifer. Many of the areas that are slated to be in SSA are areas where we have seen serious decline in aquifer levels or even salt water intrusion. The Coastal Area Facility Review Act (CAFRA) requires that no permit should be issued that would cause salt water intrusion, yet that is not being taken into consideration here. New sewers, additional impervious cover, and compaction of soils, destroy groundwater

recharge capabilities, lower the aquifer, and accelerate salt water intrusion. This leads to a drop in base flow of the streams which will increase pollutant loadings from non-point sources in particular because of the additional runoff from development as well as the availability of less water for dilution which we believe will violate the Surface Water Quality Standards since many of these streams are Category 1 or drain into waters that are SE 1. The commenter believes this plan does not reflect the "Future Water-Supply Scenarios, Cape May County, New Jersey 2003-2050" study and is in fact in conflict with it. (5)

**39. Comment:** The commenter does not believe that the WMP adequately reflects the additional non-point source pollution loading that will result from additional impervious cover and disturbed areas. (5)

**40. Comment:** The purpose of a WQM Plan is to establish policies, SSAs, procedures, and standards, which, wherever attainable, help to restore, enhance and maintain the chemical, physical and biological integrity of the waters of the State, including ground waters. The commenter asks that the Department follow its regulations and policies regarding water supply.

**41. Comment:** The commenter feels that the proposed FWSA is in conflict with the current New Jersey Statewide Water Supply Plan (NJSWSP). N.J.A.C. 7:15-5.25(f) specifies that the Department shall not adopt an amendment to a WMP if water supply needs associated with that plan are in conflict with the most current NJSWSP. The most current plan is the 1996 NJSWSP, which indicates that Cape May County is in water supply planning area #23. According to the plan, the planning area had a 1990 water supply surplus of 4 million gallons a day (MGD), but was projected to have a water supply deficit of 1 MGD in 2010 and a 7 deficit by 2040 (NJDEP, 1996, pages 93 – 95). It describes that the planning area is vulnerable to saltwater intrusion due to the fact that it is nearly surrounded by the Atlantic Ocean and the Delaware Bay, the fact that there is little potential for sources of surface water, and the high summer demands that accompany the tourist season. The plan specifically declares that the yield of the shallow aquifer system (primarily the Cohansey aquifer) has been exceeded in the southern cape area, allowing saltwater to replace formerly freshwater supplies. It also underscores that the deeper Atlantic



City 800-foot sand aquifer is being “mined” and the saltwater front is moving toward existing wells. (1)

**42. Comment:** The commenter believes that the proposed Cape May County WQM Plan/FWSA would significantly facilitate negative water supply impacts by allowing for substantial new development that would require much more water than is presently used. It is imperative that the amendment address these impacts. An adequate water-monitoring network should be implemented to better understand the potential impacts to the water resources of the County. (1)

**43. Comment:** The commenter states it has assessed the potential for ESAs and designated uses to be impacted by water withdrawals in Cape May County watersheds, and asserts that these watersheds will be negatively impacted, and that the proposed FWSA map should address these impacts. (1)

**Response to Comments 30-43:** The Cape May County FWSA Map was proposed in accordance with P.L. 2011, c. 203. P.L. 2011, c. 203, permits a wastewater management planning agency to prepare and submit to the Department at least that portion of a WMP designating SSA, which shall comply with the Department’s regulatory criteria; P.L. 2011, c. 203 likewise authorizes the Department to adopt an entire plan or a portion thereof. Pursuant to P.L. 2011, c. 203, the Department implemented a phased approach to comprehensive WMP planning. The Cape May County FWSA Map is “that portion of a WMP designating SSA” pursuant to P.L. 2011, c. 203. As described in the proposal, the FWSA map was prepared in accordance with N.J.A.C. 7:15-5.24, which governs the delineation of SSAs. Generally, N.J.A.C. 7:15-5.24 requires the exclusion from SSA of certain ESAs, coastal planning areas, and special restricted areas with some exceptions. The FWSA map is only one element of a WMP; it is not a complete WMP. As such, the FWSA map was not subject to the complete comprehensive planning set forth in N.J.A.C. 7:15. The development and adoption of the FWSA map is the first phase of comprehensive wastewater management planning. N.J.A.C. 7:15 requires Cape May County to ultimately complete and submit a comprehensive WMP.

The commenters have raised concerns about compliance with the Water Supply Management Act and regulations, the Integrated Water Quality Monitoring and Assessment Report, the Surface Water Quality Standards, the Ground Water Quality Standards, the Gibson Bill, saltwater intrusion, the Statewide Water Supply Management Plan, non-point source pollution, and storm surges and sea level rise. Because the FWSA map was evaluated based on N.J.A.C. 7:15-5.24, as discussed above, these comments are beyond the scope of this proposed amendment.

However, any development would still be subject to applicable regulatory requirements and approvals. As stated in the FWSA amendment proposal, “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. Further, the proposal notes “[a]pproval of this amendment would not eliminate the need for any permits, approvals, or certifications required by 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 aspects of any project or need permits and approvals.” Thus, as applicable, the following types of permits/approvals would still be required: NJPDES, water allocation, CAFRA stormwater, flood hazard area, treatment works approval and freshwater wetlands permits.

The WQM Planning rules establish a process for the development of county WMPs that are a critical element of the Department’s water resource protection program and intended to achieve all established water quality standards and regulatory criteria. As noted above, Cape May County should continue to work toward completion of the full Cape May County WMP pursuant to the requirements set forth in the WQM Planning rules. Commenters are encouraged to submit their comments to the Department when the issues raised above will be evaluated by the Department. At this time, the information presented by commenters is outside the scope of the FWSA map adoption.

**44. Comment:** The commenter urges the Department to follow the WQMP Public Notice and its rules by excluding all ESAs from the FWSA map, including areas mapped as endangered and threatened wildlife species habitat. In particular, the commenter supports the mapping that is consistent with the data contained in the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Species ("Landscape Maps") Versions 2.1 and 3.1. (1, 5)

**45. Comment:** The commenter believes that both Landscape Maps must be used because Version 2.1 is specifically identified in the Public Notice, and Version 3.1 is specifically referenced under the title "Landscape Project Data" by a link (<http://www.nj.gov/dep/gis/install.html>) at N.J.A.C. 7:15-5.24 (b)1. (1)

**Response to Comments 44-45:** As stated above, ESAs have been assessed in accordance with N.J.A.C. 7:15-5.24 to determine what areas must be excluded from SSA on the adopted FWSA map. The WQM Planning rules at N.J.A.C. 7:15-5.24 identify the conditions where extension of sewer service is not appropriate. As the Department has previously stated regarding this rule, N.J.A.C. 7:15-5.24(a) sets forth the general policy that large contiguous areas of environmentally sensitive resources should not be included in SSAs. The limitations on the extension of sewer service in these areas are consistent with the Department's mandate to protect the ecological integrity and natural resources of New Jersey, including water, threatened and endangered species, wetlands and unique and rare assemblages of plants.

Further, the rules also provide a level of deference to local planning objectives and identify multiple avenues by which environmentally sensitive lands may be included in SSA at N.J.A.C. 7:15-5.24(e) through (h). These avenues include methods to rebut the presumption that the environmental data utilized to delineate SSA is correct, to allow for infill development when the land is not critical to a protected species population, to create a linear boundary that relates to recognizable geographic features as allowed by N.J.A.C. 7:15-5.20(b)2 when the land is not critical to a protected species population, and to recognize comprehensive planning efforts that

accommodate center based development. The Department has reviewed these comprehensive planning efforts within the Cape May County municipalities that have successfully gone through the plan endorsement process. These comprehensive plans include revised master plans and zoning ordinances that establish compact center-based development, limit development densities outside of centers in rural areas, identify environmentally sensitive lands, and implement resource protection ordinances that limit impacts on ESAs. The Department has determined that these planning efforts meet the requirements of the WQM Planning rules at N.J.A.C. 7:15-5.24(h).

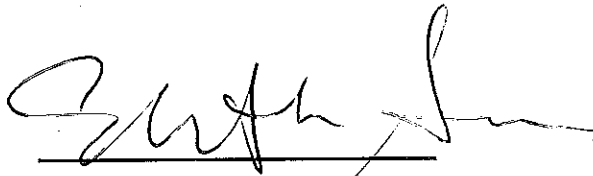
Cape May County's proposed FWSA map was submitted to the Department for review prior to the release of Landscape Project Version 3.1. The Cape May County Planning Department utilized the Landscape Project mapping available at the time, which was Version 2.1, when completing the wastewater service area delineation. As noted in the proposal notice for this amendment, the Department utilized Version 2.1 while reviewing this amendment. Consequently, areas identified as ESA only under Version 2.1 have been excluded from SSA in accordance with N.J.A.C. 7:15-5.24 upon adoption of this amendment. However, any party may submit an application to the Department for a site specific amendment or revision, as applicable, to a WQM Plan to include or exclude additional areas and/or facilities in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable. The Department's review will utilize the most current Landscape Project version available at the time the amendment or revision application is submitted.

In addition to the specific written comments addressed above, the Department received information submitted to the County from the CMCMUA in response to its request for consent. The CMCMUA states that Department maps depicting SSAs, wetlands and habitat have historically and currently contain errors. Because the Department relied on these maps to delineate the designated centers in the Middle Township endorsed plan as well as SSAs, some parcels that were previously in sewer service were improperly removed from the FWSA. The CMCMUA requests that the Department work to remedy any concerns or errors. The CMCMUA's comment is similar to Comment 18 from Middle Township expressing the same

concerns. The Department intends to work with Middle Township and the CMCMUA to correct any errors through the amendment process, in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable.

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 Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15.

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

A handwritten signature in black ink, appearing to read "Elizabeth Semple", written over a horizontal line.

Elizabeth Semple, Manager

Division of Coastal and Land Use Planning

Department of Environmental Protection

11/6/13

Date