



## State of New Jersey

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Coastal & Land Use Planning

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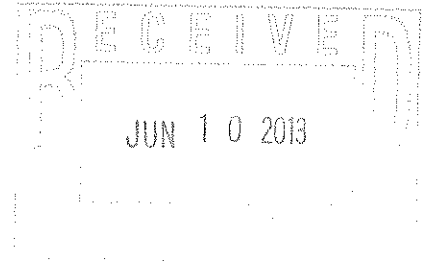
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<http://www.nj.gov/dep/lum/lup.htm>

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

BOB MARTIN  
*Commissioner*



Eric Snyder  
Sussex County Planning Division  
One Spring Street  
Newton, NJ 07860

Re: Sussex County Future Wastewater Service Area (FWSA) Map  
Sussex County Wastewater Management Plan (WMP)  
Sussex County Water Quality Management Plan (WQMP)  
Program Interest No.: 435459  
Activity No.: WMP120002  
**Adopted Amendment**

JUN 04 2013

Dear Mr. Snyder:

A plan amendment proposal was submitted to the Department of Environmental Protection (Department). This amendment was prepared pursuant to the provisions of the NJ Water Quality Planning Act, N.J.S.A. 58:11a-1 et seq., the WQM Planning rules, N.J.A.C. 7:15, and P.L. 2011, C.203. Submitted on behalf of the Board of Chosen Freeholders of Sussex County, this amendment proposed a Future Wastewater Service Area map for that portion of Sussex County entirely with the Sussex County WQM Plan. This amendment proposal was noticed in the New Jersey Register on January 7, 2013, at 45 N.J.R. 66(a)

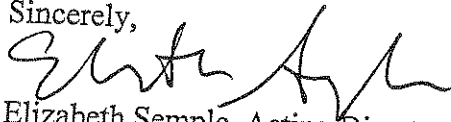
I am pleased to inform you that this amendment is now formally adopted as of the date of this letter. The enclosed adopted amendment notice includes a summary of all comments received during the comment period and the Department's responses. Final notice of this adoption will be placed in the New Jersey Register.

If you wish to dispute the Department's factual findings or any of its conditions, or if anyone is aggrieved by this determination, an adjudicatory hearing may be requested. A request for an adjudicatory hearing shall be submitted in writing by certified mail, or by other means which provides verification of the date of delivery to the Department, within 30 calendar days of notice of this decision made pursuant to N.J.A.C. 7:15-3.1 or 3.2, 3.4(g)2i or ii or 3.4(g)8ii through iv. The adjudicatory hearing request must include the information identified at N.J.A.C. 7:15-3.9. The hearing request must be submitted to the Department addressed to Office of Legal Affairs,

ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Mail Code 401-04L, 401 East State Street, Trenton, NJ 98625-0402. A copy of the request shall be submitted to Division of Land Use Regulation at the address contained in the letterhead above.

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

Sincerely,



Elizabeth Semple, Acting Director  
Division of Coastal Land Use Planning

Enclosure: Adopted Notice

Phillip Crabb, Sussex County Freeholder  
John Eskilson, Sussex County Administrator  
Chris Danis, NJ Highlands Council  
George Graham, Stanhope Borough Engineer  
Joseph Sabatini, Township Manager, Byram Township  
Thomas Varro, Chief Engineer, SCMUA  
John Carafello, Resident, Andover Township  
Eric Keller, Omland Engineering Associates  
Tony DiLodovico, Tony D Environmental Permitting, LLC  
James Pontoriero, NJDEP, DWQ, BMFCP  
Ron Bannister, NJDEP, DWQ, BNPC  
Paul DeMuro, NJDEP, DCLUP  
Division of Coastal and Land Use Planning - File

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

DIVISION OF COASTAL AND LAND USE PLANNING

**Adopted Amendment to the Sussex County Water Quality Management Plan**

**Public Notice**

Take notice that on \_\_\_\_\_, 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 Sussex County WQM Plan. This amendment adopts the Future Wastewater Service Area (FWSA) map for Sussex County.

The notice of this amendment proposal was published in the New Jersey Register on January 7, 2013, at 45 N.J.R. 66(a), and the Star Ledger and New Jersey Herald on the same date. In accordance with the Sussex County WQM Plan adopted amendment procedures, as the designated WQM Planning Agency for the Sussex County WQM Planning Area, the Sussex County Board of Chosen Freeholders held a public hearing on February 13, 2013. The public comment period for the proposed amendment to the Sussex County WQM Plan closed 15 days following the February 13, 2013, public hearing. In accordance with the Sussex County WQM Plan amendment procedures, on May 22, 2013, the Sussex County Board of Chosen Freeholders adopted a resolution approving the amendment for adoption by the Department. The adoption of this amendment addresses the FWSA map for the portion of the Sussex County WQM Plan that is entirely within Sussex County only.

This adopted amendment was submitted on behalf of the Board of Chosen Freeholders of Sussex County as the responsible Wastewater Management Planning Agency. The proposed amendment was submitted to the Department pursuant to P.L. 2011, c. 203, enacted on January 17, 2012, which permits the Wastewater Management Planning Agency to prepare and submit to

the Department at least that portion of a wastewater management plan (WMP) designating sewer service area (SSA), which shall comply with the Department's regulatory criteria. The adopted map, titled "Sussex County New Jersey, Future Wastewater Service Areas, Amending the Sussex County Areawide Water Quality Management Plan," supersedes all wastewater service area mapping in Sussex County for areas served by wastewater treatment facilities located within and outside of Sussex County currently contained in the Sussex County WQM Plan, including that which was adopted as part of an approved WMP.

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

Pursuant to P.L. 2011, c. 203, the Department, in consultation with the applicable wastewater management planning agency, may approve the inclusion of land within a SSA notwithstanding that existing treatment works may not currently have the assured capacity to treat wastewater from such land without infrastructure improvements or permit modification. Therefore, amendments to update a SSA may be approved if such actions are compliant with the applicable sections of the 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 Sussex County have held numerous meetings with 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 March 15, 2011, to allow public review and comment on the then-current draft of Sussex County's SSA. As a result, the Department and the County have received continuous input from residents, municipal officials, and other affected agencies regarding mapping corrections and other issues.

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

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

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

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

edge of a lake, pond or reservoir at bank-full flow or level. Category One waters, their tributaries, and all Highlands waters, are afforded a 300-foot buffer. In addition, as required under N.J.A.C. 7:15-5.20(b)3, the adopted FWSA map text indicates that development in riparian zones, or designated river areas, may be subject to special regulation under Federal or State statutes or rules. Riparian zones or buffers are established along all surface waters, based on the surface water body's classification designated at N.J.A.C. 7:9B, under the following regulations: the Flood Hazard Area Control Act rules (N.J.A.C. 7:13), the Highlands Water Protection and Planning Act rules (N.J.A.C. 7:38), the Stormwater Management rules (N.J.A.C. 7:8), and the WQM Planning rules (N.J.A.C. 7:15). Most development within these riparian zones is regulated by these programs.

In accordance with N.J.A.C. 7:15-5.24(b)4, areas mapped as 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).

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

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. Where a narrative approach has been used, it is noted as text on the adopted FWSA map. Pre-existing grant conditions and requirements (from Federal and State grants or loans for sewerage facilities) which provide for restriction of sewer service to environmentally sensitive areas, are unaffected by adoption of this amendment and compliance is required.

In addition to the environmentally sensitive areas with Federal 201 grant limitations that prohibit the extension of sewers identified under N.J.A.C. 7:15-5.24(d)1, there are other special restricted areas, not applicable here, which must also be excluded from SSA pursuant to N.J.A.C. 7:15-

5.24(d)2 through 4. Specifically, there are no beaches, coastal high hazard areas, or dunes in Sussex County.

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

In accordance with N.J.A.C. 7:15-3.10, the Highlands Water Protection and Planning Council (Highlands Council) was provided an opportunity to review and comment on the proposed amendment within the Highlands Region for consistency with the adopted Regional Master Plan (RMP). In correspondence dated April 8, 2013, Sussex County was advised that the Highlands Council consents to the adoption of the proposed amendments with the understanding that when a full WMP for Sussex County is submitted to the Department for review, a Water Use and Conservation Management Plan will need to be adopted for the deficit Hydraulic Unit Code (HUC) 14 subwatersheds identified in Sussex County.

The notice of this amendment proposal was published in the New Jersey Register on January 7, 2013, at 45 N.J.R. 66(a).

The following people submitted written comments on this amendment:

**Number – Commenter Name, Affiliation**

1. Thomas Varro, Chief Engineer, Sussex County Municipal Utility Authority (SCMUA)
2. Joseph Sabatini, Township Manager, Byram Township
3. Tony DiLodovico, Tony D Environmental Permitting, LLC, on behalf of Route 15 Properties, LLC
4. Eric Keller, Omland Engineering Associates, on behalf of the New Jersey Builders Association, Community Builders Association, and the Builders and Remodelers Association
5. John Carafello, Resident, Andover Township
6. George Graham, Council Member, Stanhope Borough
7. John Esklison, Administrator, Sussex County

## 8. Phillip Crabb, Sussex County Freeholder

As noted below in response to the specific comments, upon review of the comments requesting to modify the FWSA map, the Department is adopting this amendment 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 amendment 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 which would enlarge or curtail which properties would be affected by the adopted FWSA map and/or the way in which properties would be affected by the adopted FWSA map would be considered substantial. Making such substantial changes on adoption would effectively destroy the value of the public notice and, thus, a new notice and public comment period are required prior to consideration of such changes pursuant to the process set forth in N.J.A.C. 7:15-3.4.

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

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

**1. Comment:** The commenter notes that the Table of Proposed Future Service Areas for Facilities Discharging to Groundwater (DGW Table) on the proposed Sussex County FWSA map identifies number 13 as the Branchville Borough Wastewater Treatment Plant (WWTP). The commenter explains that this facility is a proposed regional WWTP to be owned and



operated by SCMUA, will serve both Branchville Borough and Frankford Township, and should therefore be referenced as “Paulinskill WWTP” or “SCMUA Paulinskill WWTP.” (1)

**Response:** As reflected by the proposed map, the proposed DGW facility would serve both Branchville Borough and Frankford Township. The commenter indicates, however, that the SCMUA, the owner and operator of this facility, prefers to identify the facility by the name of the area watershed (Paulinskill) on the DWG Facility Table. The Department notes that the New Jersey Pollution Discharge Elimination System (NJPDES) DGW Permit No. NJ0146676 recognizes the facility as “Branchville WWTP & Groundwater Disposal Beds.” As such, the Department wishes to retain this portion of the facility name, (Branchville WWTP), in the DGW Table mapping key designation. However, for clarification, the Department has directed Sussex County to modify the DGW Table mapping key number 13 to “Branchville WWTP, also known as SCMUA Paulinskill WTP” indicating both the NJPDES permit facility name and SCMUA’s regional operation and ownership, as part of this adoption. The Department has determined that this modification is a technical correction.

**2. Comment:** The commenter states that the DGW Table mapping key number 75 labeled “Proposed Frankford Town Center [Sanitary Treatment Plant (STP)]” should also provide the pending NJPDES Permit number (NJ0208990) next to this proposed facility name. (1)

**Response:** The Department agrees that the DGW Table mapping key number 75 listing the proposed Frankford Town Center STP should include the pending facility NJPDES permit number. However, as this permit cannot be issued until the site specific amendment currently under review by the Department for this proposed DGW has been adopted, the mapping key will also indicate in parentheses that the NJPDES permit is pending. The Department has determined that this modification is a technical correction and has directed Sussex County to modify the FWSA map as part of this adoption.

**3. Comment:** The commenter notes that the SSA mapping and associated DGW Table mapping key number 83 indicates that the entirety of the Vernon Township SSA is to be served by the SCMUA Upper Wallkill DGW Facility (NJ0145688). The commenter states that the mapping

should additionally cross reference the SCMUA Upper Walkkill Discharge to Surface Water (DSW) Permit (NJ0053350), since a large portion of wastewater allocated to Vernon Township (380,000 gpd) is served by and utilizes the WWTP's DSW allocation, while the remainder (265,000 gpd) has been allocated to accommodate two development locations: Mountain Creek and Town Center. The commenter further states that while it is understood that the FWSA map does not reference wastewater flows and/or allocations, the SSA reference to both NJPDES discharges should be provided for correctness. (1)

**Response:** The Department consulted with the SCMUA and the Sussex County Division of Planning with regard to a solution for mapping SSA within Vernon Township as noted by the commenter. SCMUA indicated that all wastewater generated within Vernon Township, including the Mountain Creek and Town Center development locations, is collected in the same infrastructure and conveyed for treatment at the Upper Walkkill Facility. This facility is permitted to discharge portions of the treated wastewater allocated to Vernon Township via the SW discharge point (380,000 gpd) and to GW disposal beds (265,000 gpd).

To more accurately reflect how Vernon Township wastewater is discharged, the Department and Sussex County agreed that the FWSA map be revised to include a new combined SW and GW discharge designation. A Vernon SSA mapping graphic was created using the underlying SSA color designated on the FWSA map for SCMUA Upper Walkkill DSW (light green) overlaid with a small cross hatch. This graphic was placed on the map legend identifying it as: "Proposed Future Service Area for Facilities Discharging to Surface and Groundwater: Facility Name: 'SCMUA Upper Walkkill DSW/DGW (NJ0053350/ NJ0145688)'." The Department has determined that this modification is a technical correction and has directed Sussex County to modify the FWSA map as part of this adoption.

**4. Comment:** The commenter notes that, due to the large scale used for the Sussex County FWSA map, the SSA mapping graphics do not correlate with the recently adopted Byram Township Municipal Chapter of the Sussex County WMP (the Byram Chapter). As Byram Township is a Highlands Conforming Municipality, the Byram Chapter conforms to the Highlands RMP. As such, there are differences in terminology and graphic mapping

representation between the proposed Sussex County FWSA map and the SSA mapping approved as part of the Byram Chapter.

The commenter believes that because the proposed Sussex County FWSA map is to be adopted independent from the entire county-wide WMP document, the map could be more descriptive. The commenter states that Byram Township anticipates that the written WMP document will help clarify the map and verify that the Byram section of the Sussex County WMP will contain the adopted Byram Chapter. The commenter explains that the Byram Township portion of the proposed County FWSA map is acceptable as long as the stipulation is made that the Byram section of the Sussex County WMP (when completed) will consist of the Byram Chapter as adopted by the Department on July 24, 2012, including the full text and accompanying maps. Since Byram Township is the only Highlands Conforming municipality to have an approved WMP Chapter within Sussex County, the commenter requests that a notation to this effect be included on or within the key of the adopted Sussex County FWSA map. (2)

**Response:** The Department recognizes the commenter's concerns as they relate to the differences between the mapping graphics and terminology presented in the FWSA map and the adopted Byram Chapter. The Department and Sussex County have agreed to include the following annotation on the adopted Sussex County FWSA Map: "For more detail on the FWSA mapping within Byram Township, please refer to the Byram Township (Highlands Conforming) Municipal Chapter of the Sussex County Wastewater Management Plan adopted by the Department on July 24, 2012." The Department has determined that this modification is a technical correction and has directed Sussex County to modify the FWSA map as part of this adoption.

Regarding the inclusion of the Bryam Chapter in a proposed Sussex County WMP, Sussex County may either include the entire Byram Chapter in the Sussex County WMP, or may include it by reference. Regardless of which method used, in accordance with its adoption, the Byram Chapter is formally part of the Sussex County WMP and will remain so upon adoption of an updated Sussex County WMP.

**5. Comment:** The commenter requests, on behalf of Route 15 Properties, LLC (Block 273.01, Lot 11 & Block 273.02, Lots 1 & 2), located in Jefferson Township, Morris County, that the project location, collectively, be proposed as its own FWSA based upon local and Department approvals for proposed onsite development. (3)

**Response:** While the proposed project property is located within the jurisdictional boundary of the Sussex County WQM Planning Area, this amendment only addresses the FWSA map for the portion of the Sussex County WQM Plan that is entirely within Sussex County, as noted earlier. The site in question is located within Morris County, which is a separately proposed amendment to the Sussex County WQM Plan for the Morris County FWSA map. Accordingly, this comment will be considered in the Department's response to the proposed Sussex County WQM Plan for the Morris County FWSA map. The notice of that amendment proposal was published in the New Jersey Register on January 7, 2013, at 45 N.J.R. 67(a). The public hearing on that amendment proposal was also held by Sussex County Board of Chosen Freeholders on February 13, 2013, and the public comment period closed 15 days following the February 13, 2013, public hearing. Note that any proposed amendment for this site, including a FWSA mapping designation as part of the Morris County FWSA Map, is subject to the Sussex County WQM Plan adopted amendment procedures administered by the Sussex County Board of Chosen Freeholders as the designated WQM planning agency.

**6. Comment:** The commenter appreciates the amount of effort the County has put into the development of the FWSA map. (4)

**Response:** The Department concurs with the comment.

**7. Comment:** The commenter believes that there is a lack of balance in the plan because rules for inclusion in SSA are black and white and no consideration is given to the various sewerage and municipal utility authorities that have built and invested in treatment and/or collection systems and are now being precluded from utilizing these systems to their full capacity. The commenter states that for most of Sussex County there are no capacity problems at the treatment

facilities and there is capacity to build. The commenter believes that, while land is available for development in centers, the Department has made it unavailable.

The commenter further asserts that while there certainly are environmentally sensitive lands that should be preserved, Department regulations protect those lands. The commenter nonetheless believes that wastewater management should not be another means by which the Department tells property owners and local and county government how environmentally sensitive land should be developed: that is what zoning and all other environmental regulations are for. (4)

**Response:** The Department believes that the WQM Planning rules and the criteria and procedures therein provide for a fair and equitable process that meets the goals of the State and the requirements of applicable State and federal statutes. The primary intent of the WQM Planning rules is to protect water quality in the State, to unify land use planning among various levels of government through a continuing planning process, and to ensure that environmental infrastructure exists to support future development. The rules at N.J.A.C. 7:15-5.24 identify the conditions where extension of sewer service is not appropriate (sewer service area delineation criteria). 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. Centralized wastewater is inappropriate for these areas because it subsidizes and otherwise encourages the development of these resources at a density that is inconsistent with their protection and the environmental protection mandate of the Department. The Department has determined that the appropriate wastewater management alternative for these areas is individual subsurface sewage disposal systems (ISSDSs) that discharge less than 2,000 gallons per day, typically called septic systems. Therefore, though excluded from the extension of sewer service, these areas have a wastewater management alternative that will promote a density of development consistent with the conservation of these resources.

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 commenter correctly notes that capacity considerations have not been made during the Department's review of this amendment. As no future build out analysis of any of the wastewater treatment facilities which have SSA delineated as part of this FWSA map was conducted or required for the proposed amendment, capacity issues have not been identified or assessed. The Department notes that Sussex County is required to propose a county-wide WMP pursuant to the WQM Planning rules. A complete county-wide WMP will include a build-out analysis for all the wastewater treatment facilities in the County. A build-out analysis based on the FWSA map may indicate that a specific wastewater treatment facility has available capacity. Nonetheless, the adoption of this FWSA map does not preclude any future expansion of SSA for connections to serve new development.

**8. Comment:** The commenter states that a good portion of Sussex County is also located in the Highlands Region, and there is no clear direction regarding how the Highlands Council will be dealing with infill lots which were in SSA but because they are not developed today are going to be removed from the SSA due to Highlands Council requirements. (4)

**Response:** The comment goes beyond the scope of the proposed amendment. The commenter appears to be concerned with the Highlands Council's requirements for undeveloped infill lots in the Highlands Region, the area protected under the Highlands Water Protection and Planning Act (Highlands Act), N.J.S.A. 13:20-1 et seq. The Highlands Council's requirements for undeveloped infill lots only applies in municipalities that conform to the Highlands RMP, which are not addressed as part of this amendment.

**9. Comment:** The commenter believes that as a result of the Department's determinations that a property cannot be included in SSA, there is not a lot of interest in development of that property. The Department's response has been to spend thousands of dollars to conduct a habitat suitability determination (HSD) study to prove that there are not threatened or endangered species on a tract while the Department's own data provides no definitive reason why the species should /could be there. (4)

**Response:** The commenter appears to be questioning the accuracy of the data used by the Department to identify environmentally sensitive areas as well as the WQM Planning rule procedures that can be followed to refute the accuracy of that information. As indicated above, to determine whether areas are designated as threatened or endangered wildlife species habitat and must be excluded from SSA, the Department utilizes the Landscape Project in accordance with N.J.A.C. 7:15-5.24(b)1.

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

Despite the fact that the Landscape Project maps have been regularly updated and will continue to be amended periodically, the Department recognizes that the Landscape Project maps represent a snapshot in time and that subsequent alterations to the landscape may have occurred that affect the suitability of species habitat. As such, of the multiple avenues in the WQM Planning rules through which environmentally sensitive areas may be included in SSA, N.J.A.C. 7:15-5.26 provides applicants with the ability to apply for an HSD through which the applicant can rebut the presumption that a habitat patch of Rank 3, 4, or 5 on the Department's Landscape

Maps of Habitat for Endangered, Threatened and Other Priority Wildlife, which must be excluded from SSA pursuant to N.J.A.C. 7:15-5.24, is accurate. Should the Department determine that a HSD adequately demonstrates that the site is not suitable habitat, and that habitat is the only resource resulting in identification of the site as environmentally sensitive, an applicant may utilize the site specific amendment or revision process to include the site in SSA.

As mentioned above, the limitations on the extension of sewer service in environmentally sensitive 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. Centralized wastewater is inappropriate for these areas because it subsidizes and otherwise encourages the development of these resources at a density that is inconsistent with their protection and the environmental protection mandate of the Department. The Department has determined that the appropriate wastewater management alternative for these areas is ISSDSs that discharge less than 2,000 gallons per day, typically called septic systems. Therefore, though excluded from the extension of sewer service, these areas have a wastewater management alternative that will promote a density of development consistent with the conservation of these resources.

**10. Comment:** The commenter raises concerns with development within Septic Areas (areas to be served by ISSDSs with planning flows 2,000 gpd or less) and the application of the wastewater flow projections pursuant to N.J.A.C. 7:9A for proposed development utilizing an ISSDS. The commenter is further concerned that the application of the Recharge-Based HUC 11-Scale Nitrate Carrying Capacity Planning Tool model developed by the Department employs conservative assumptions that result in significantly large lot sizes for single family dwellings and does not look at local demographics or soil types. As a result, this can affect property values and people's livelihoods. The commenter encourages the County and the Department to recognize the availability of alternative wastewater treatment technologies that can reduce nitrate levels in the wastewater discharge. (5)

**Response:** Questions and issues relating to the wastewater flow projections established at N.J.A.C. 7:9A are not applicable to this amendment, and so are not addressed herein. Further, as



the Recharge-Based 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).

**11. Comment:** The commenter asserts that Stanhope Borough has been involved in the County WMP development process since it was initiated in 2000. The commenter states that, as part of the process to develop the proposed FWSA map, the areas requested by the Borough to be included in SSA have not been. (6)

**Response:** No specific sites were identified by the commenter, so a specific response cannot be provided by the Department. However, all areas in Stanhope Borough that are not identified as environmentally sensitive, pursuant to N.J.A.C. 7:15-5.24; that are not identified as open water; and that are developable, are included in SSA on the adopted map.

**12. Comment:** As Stanhope Borough is within the Highlands Region, it now has the dual problem that, in addition to the WQM Planning rules, the Highlands regulations also impact two of the remaining sizable developable lots within Stanhope Borough. When you take into consideration the Department stream buffer requirements, any significant development becomes prohibitive on these lots. In addition there are COAH requirements that are difficult to meet if the Borough has no land that can be developed. As a result, Stanhope Borough is placed in the uncomfortable position of developing a plan or joining the Highlands. (6)

**Response:** The comment goes beyond the scope of this amendment. The Department assumes the commenter is referring to a COAH Fair Share Plan or choosing to petition to conform to the

Highlands Regional Master Plan (RMP), neither of which is addressed by or subject to this amendment.

**13. Comment:** The commenter supports and thanks the Department for being accommodating where it could in light of the requirements of the WQM Planning rules and for assisting the County in producing a FWSA map that is, at this point, at least acceptable to most municipalities in Sussex County. (6)

**Response:** The Department thanks the commenter for the support.

**14. Comment:** The commenter notes that the Department and the County have worked in close cooperation to prepare a draft map that addresses the County's needs. (8)

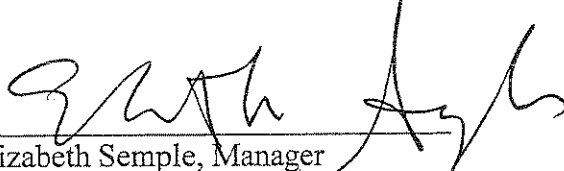
**Response:** The Department acknowledges the commenter's statement.

In addition to the specific written comments addressed above, the Department received information submitted to the County from the Borough of Andover in response to the request from Sussex County to provide a resolution consenting to this proposed amendment. The consenting resolution passed by Andover Borough specifically requested the removal of SSA from various parcels upon fulfillment of certain deed restrictions, easements, reservations and covenants to be recorded with the Clerk of Sussex County in the near future. The specific affected parcels within Andover Borough are the following: Block 1, Lot 1; Block 8, Lot 5; Block 12, Lots 1 & 6; Block 23, Lot 22; Block 30, Lot 1; Block 31, Lot 1. These parcels were to be developed by Sussex Properties Ltd (Beazer Homes) and served by a proposed NJPDES DSW facility (NJ0134490) named Sussex Properties Ltd Wastewater Treatment Plant (WWTP). The parcels in question were delineated on the proposed FWSA map as SSA to the Sussex Properties Ltd WWTP facility, which has yet to be constructed. At this time, an agreement between the property owners, Sussex Properties Ltd, SCMUA (permittee), The Trust for Public Lands, and New Jersey Green Acres Program is pending finalization for the purchase of the properties to be placed in open space/ preservation purposes. Upon execution of the agreement of sale and filing with the County Clerk of all deed restrictions as open space, the development proposed on these

parcels would be prohibited, thus removing the need for these parcels to be included in SSA. The NJPDES permit is to be revoked by the Department. An amendment may be submitted to the Department to exclude these parcels from SSA. However, the parcels remain included in SSA upon adoption of this amendment.

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 these amendments does not provide any implied approval for any other aspects of any project or needed permits and approvals. Further, the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15.

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

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

6/4/13  
Date

