

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION  
DIVISION OF COASTAL AND LAND USE PLANNING

Adopted Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that on **OCT 9 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 Mercer County WQM Plan. This amendment adopts a new Wastewater Management Plan (WMP) for Mercer County.

The notice of this amendment proposal was published in the New Jersey Register on March 4, 2013, at 45 N.J.R. 479(a), and in The Times of Trenton and The Trentonian on the same date. In accordance with the Mercer County WQM Plan adopted amendment procedures, as the designated WQM Planning Agency for the Mercer County WQM Planning Area, the Mercer County Planning Division held a public hearing on April 10, 2013. The public comment period for the proposed amendment to the Mercer County WQM Plan closed on April 25, 2013, fifteen days following the public hearing. In accordance with the Mercer County WQM Plan amendment procedures, on June 14, 2013, the Mercer County Executive, on behalf of the Mercer County Board of Chosen Freeholders formally recommended that the Department adopt this amendment.

This amendment adopting a new areawide WMP for Mercer County was submitted by the Mercer County Board of Chosen Freeholders, as both the Wastewater Management Planning Agency for Mercer County and the designated WQM Planning Agency for the Mercer County WQM Planning Area and was prepared pursuant to the New Jersey 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.

This WMP replaces all previously adopted municipal and municipal utility authority WMPs in Mercer County as well as areas outside of Mercer County served by wastewater treatment facilities located within Mercer County which have been included as part of an adopted WMP, with the exception of East Windsor Township, Pennington Borough, and Robbinsville Township, which have adopted municipal WMPs that remain in effect, and which are adopted by reference as the appropriate municipal chapters in the Mercer County WMP.

The adopted WMP identifies areas to be served by sewage treatment facilities/sewer systems and areas to be served by individual subsurface sewage disposal systems (ISSDS) with wastewater planning flows of 2,000 gallons per day (gpd) or less (septic systems). The WMP also evaluates future wastewater treatment needs, water supply demands, and nonpoint sources of pollution.

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 sewer service area (SSA) notwithstanding that existing treatment works may not currently have the assured capacity to treat wastewater from such land without infrastructure improvements or permit modifications. Therefore, amendments to update a SSA may be approved if such actions are compliant with the applicable sections of the WQM Planning rules (N.J.A.C. 7:15) regardless of whether capacity has been fully assessed. Additional issues which may need to be addressed for any new or expanded wastewater treatment facility proposal include, but are not limited to, compliance with stormwater regulations, antidegradation, effluent limitations, water quality analysis, and exact locations and designs of future treatment works. Additionally, sewer service to any particular project is subject to contractual allocations between municipalities, authorities and/or private parties, and is not guaranteed by this amendment. Finally, P.L. 2011, c. 203, 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 to fully comply with the requirements set forth in N.J.A.C. 7:15.

The adopted WMP modifies existing SSAs and areas served by ISSDSs in existing plans in a variety of instances. The Significant Action section of the WMP discusses the major changes to certain SSA based on environmental sensitivity and local planning objectives. Further, Map 2M and 3M titled "Future Wastewater Facilities and Sewer Area" (FWFSA) in each municipal chapter shows the changes in SSA as a result of the adopted WMP. Additionally, in Hopewell Township, a Discharge to Groundwater (DGW) for Stony Brook Watershed Association Educational Center and a DGW for Pennytown Redevelopment Area have been adopted. No other significant changes were proposed as part of this WMP amendment.

The Department and Mercer 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 December 15, 2010, to allow public review and comment on the then-current draft of the Mercer County SSA. As a result, the Department and the County have received continuous input from residents, municipal officials, and other affected agencies regarding mapping corrections and other issues.

In accordance with N.J.A.C. 7:15-5.24, environmentally sensitive areas (ESA) have been assessed to determine what areas must be excluded from SSA as adopted herein. 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, version 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 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 the 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 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 wetlands pursuant to N.J.S.A. 13:9A-1 and 13:9B-25 are not included in the adopted SSA, except as provided under N.J.A.C. 7:15-5.24(e) through (h).

Pursuant to N.J.A.C. 7:15-5.24(c), certain coastal planning areas, 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 the Mercer County WQM planning area.

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 applicable mapping. 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. The Stony Brook Regional Sewerage Authority is the only sewerage facility in Mercer County where USEPA 201 Grant Waivers are 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, 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 the Mercer County WQM planning area.

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 accordance with N.J.A.C. 7:15-5.25(c), an environmental build-out analysis (build-out analysis), to identify future projected flow, was developed for each existing and proposed wastewater service area, on a hydrologic unit code (HUC) 11 basis. The existing and future wastewater treatment needs of each SSA associated with each specific wastewater treatment facility identified in Mercer County were evaluated. The build-out analysis was performed to project wastewater flow for either undeveloped or underdeveloped parcels within the existing and future SSA. Environmentally constrained areas have been excluded for purposes of projecting wastewater flow, and include wetlands, floodways, and stream corridors. Wastewater flow projections were calculated based upon current municipal zoning and included potential development of all remaining non-environmentally constrained parcels of vacant land, underdeveloped residential and commercial property, and any existing parcels currently served by ISSDSs that are located within the adopted SSA and not currently provided sanitary sewer service. The wastewater flow was projected applying the appropriate criteria listed at N.J.A.C. 7:14A-23.3. The total projected wastewater flow for undeveloped and underdeveloped areas

within Mercer County's existing and future SSA was used in conjunction with the estimated existing wastewater flow, as described below, to assess whether sufficient capacity exists to accommodate future need.

Pursuant to N.J.A.C. 7:15-5.25(d) an analysis was performed to assess the existing and future wastewater treatment needs for each wastewater treatment plant. The existing wastewater flow for each wastewater treatment plant was calculated based on the average of the monthly metered flow from February 2011 through January 2012 as reported to the Department in the Discharge Monitoring Reports (DMRs) received from all wastewater treatment plants serving Mercer County. The existing wastewater flow volumes from each wastewater treatment plant and the future wastewater flow as projected in the build-out analysis as indicated above are combined to determine the total projected future wastewater flow from each SSA associated with the specific wastewater treatment plant within the County and utilized to assess whether sufficient capacity exists to accommodate future need.

The analyses performed pursuant to N.J.A.C. 7:15-5.25(c) and (d) as described above demonstrate that the potential wastewater generation from each SSA does not exceed the permitted capacity for the associated treatment facility, except for the Stony Brook Regional Sewerage Authority – River Road Sewage Treatment Plant (STP), the Stony Brook Regional Sewerage Authority (SBRSA) – Hopewell STP, and the Ewing Lawrence Sewerage Authority (ELSA) STP. As stated previously, 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 modifications. Therefore, amendments to update a SSA may be approved if such actions are compliant with the applicable sections of the WQM Planning rules (N.J.A.C. 7:15) regardless of whether capacity has been fully assessed. 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 to fully comply with the requirements set forth in N.J.A.C. 7:15.

In accordance with N.J.A.C. 7:15-5.25(e), the future wastewater treatment needs were evaluated for those areas outside of SSA that are to be served by septic systems by determining the development density that can be accommodated in undeveloped and underdeveloped areas that will result in attainment of 2.0 mg/L in the ground water on a HUC 11 basis. Pursuant to the Ground Water Quality Standards (GWQS) at N.J.A.C. 7:9C and the WQM Planning rules at N.J.A.C. 7:15, areas that are designated for septic systems must achieve a planning standard of 2.0 mg/L nitrate on a HUC 11 watershed basis. It is, therefore, necessary to determine how much development relying on ground water disposal of wastewater can be supported within a HUC 11 watershed basis while attaining this planning standard, using one of the nitrate dilution models described in the WQM Planning rules at N.J.A.C. 7:15-5.25(e)1i. Achieving the planning standard ensures that existing ground water quality will be maintained on a regional basis, thus ensuring compliance with the amended antidegradation policy in the GWQS. A nitrate dilution model developed by the Department was applied to estimate the minimum lot size necessary to achieve the planning standard. The analysis performed by Mercer County for the nitrate target of 2.0 mg/L and the resulting minimum required lot sizes in each HUC 11 watershed supported that, under current municipal zoning regulations, potential development densities will result in attainment of 2.0 mg/L nitrate in ground water on a HUC 11 watershed basis.

In accordance with N.J.A.C. 7:15-5.25(f), the water supply needs associated with the environmental build-out performed at N.J.A.C. 7:15-5.25(c) were evaluated to determine whether the water supply needs can be met with existing, new, or expanded water supplies that do not conflict with the currently adopted New Jersey State Water Supply Plan (NJWSP), which was last adopted in August 1996. The analysis performed and information submitted by Mercer County pursuant to N.J.A.C. 7:15-5.25(f) demonstrated that the existing water allocation permit(s) for the water supply purveyors within Mercer County meet existing use, could serve future build-out as projected for this WMP, and do not conflict with the most current NJWSP, regional water supply plans, or TMDLs adopted as a WQM Plan amendment including, but not limited to, any limitations on withdrawals due to ecological or salt water intrusion concerns.

In accordance with N.J.A.C. 7:15-5.25(g), an assessment of nonpoint source pollution impacts of planned future development was conducted. To demonstrate that ground water recharge shall be maintained and stormwater runoff quality shall be controlled in accordance with the requirements of the Stormwater Management rules, N.J.A.C. 7:8, Mercer County municipalities have adopted stormwater management plans and ordinances that conform with the requirements of N.J.A.C. 7:8.

Lawrence Township adopted a riparian zone protections ordinance which establishes riparian zones protection standards in accordance with N.J.A.C. 7:15-5.25(g)2. All other Mercer County municipalities adopted riparian zone protections in ordinances in accordance with the Stormwater Management rules (N.J.A.C. 7:8) that prevent new disturbance for projects or activities along Category One streams. Based on other water body classifications set forth in the Surface Water Quality Standards at N.J.A.C. 7:9B-1.15, stream corridor protections are established under the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). Most significant disturbances due to development within riparian zones are regulated by this regulatory program. To demonstrate that environmental standards for steep slopes are met, only Lawrence Township adopted a steep slope ordinance that protect steep slopes from new disturbance for projects or activities, except as provided at N.J.A.C. 7:15-5.25(g)6i and ii.

Pursuant to P.L. 2011, c. 203, the Department may adopt a portion of a WMP notwithstanding the deficiencies noted above, specifically the assurance of capacity to treat all lands designated as SSA and the adoption by all municipalities of riparian and steep slopes protection ordinances in full compliance with the standards established by the WQM Planning rules. The Department will continue to work with the County and municipalities to incorporate riparian zone and steep slope protection requirements that are fully compliant with the WQM Planning rules and that will be adopted as an amendment to this County-wide WMP. 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 to fully comply with the requirements set forth in N.J.A.C. 7:15.



The notice of this amendment proposal was published in the New Jersey Register on March 4, 2013, at 45 N.J.R. 479(a). On Wednesday, April 10, 2013, a public hearing was held by the Mercer County Planning Division on behalf of the Mercer County Board of Chosen Freeholders as the WQM Planning Agency. The public comment period closed on Thursday, April 25, 2013, fifteen days following the public hearing.

The following people submitted written comments or provided testimony on this amendment:

**Number – Commenter Name, Affiliation**

1. Timothy F. McGough, P.E., Director of Community & Economic Development, Robbinsville Township
2. Tony DiLodovico, P.E., Tony D Environmental Permitting, LLC, on behalf of Pennwell Holdings, LLC, and the Gadbey Organization, property owners, Hopewell Township
3. Tony DiLodovico, P.E., Tony D Environmental Permitting, LLC, on behalf of Hamilton Commons, also known as Kuser 130 LLC, Hamilton Township
4. Robert Buda, P.E., and John Simone, Esq., on behalf of Capital Health Systems (CHS)
5. Kurt Heuring, Vice President of Administration, The College of New Jersey (TCNJ)
6. Robert Freud, P.E., P.P., Insite Engineering, LLC, on behalf of Buy Rite Liquor store, property owner, Hopewell Township
7. Jim Waltman, Stony Brook Millstone Watershed Association (SBMWA)
8. Anthony Bordieri, Facilities Manager, Institute for Advanced Study (IAS)
9. Michael Magee, Esq., on behalf of Kuser Road LLC, property owner, Hamilton Township
10. Donald Fetzer, P.E., Van Note Harvey Associates, P.C., on behalf of Princeton University, West Windsor Township
11. Larry DiSanto, Executive Vice President, CHS
12. Steven J. Picco, Esq., Saul Ewing, LLP, on behalf of Carter Road CE, LLC, Hopewell Township
13. Francis A. Guzik, Township Engineer, West Windsor Township
14. Mark Solomon, Esq., Pepper Hamilton, LLP, on behalf of The Lawrenceville School, Lawrence Township

15. John Kantorek, Executive Director, SBRSA
16. Dennis O'Neal, P.E., Ferriero Engineering, on behalf of Hopewell Borough
17. S. Robert Filler, Executive Director, Ewing Lawrence Sewerage Authority (ELSA)
18. Elizabeth George-Cheniara, Esq., Vice President of Regulatory Affairs, New Jersey Builders Association (NJBA), and on behalf of the Shore Builders Association of Central New Jersey

As noted below in response to specific comments, upon review of the comments requesting to modify the WMP and/or the SSA area, 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 SSA mapping and/or the way in which properties would be affected by the adopted WMP 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(s) listed above.

**1. Comment:** The commenter states that, in the summer of 2011, the Township of Robbinsville sought to amend its Township WMP to include three areas in the SSA: soccer playing fields, 27 homes located on Buckley Lane with failing septic systems, and a 47 single-family home subdivision known as Washington Woods. The commenter asserts that the Township submitted to the County all required documentation for the properties and the necessary updated text and tables of the Township's WMP as an amendment to the Robbinsville WMP, which it anticipated would be accomplished through the Mercer County WMP adoption process. Prior to the scheduled April 10, 2013, public hearing for the proposed Mercer County WMP the Department directed Robbinsville Township in writing to submit an amendment separate from the Mercer County WMP adoption process. The commenter states that the Township is not opposed to pursuing an amendment to the Robbinsville Township WMP, but it has spent time and money in its effort to amend its WMP through the Mercer County WMP process. However, the Township wants to go on record stating that it is happy to work with the Department to achieve the Township's goals quickly. (1)

**Response:** The Department has met with Robbinsville to discuss its submission of a proposed amendment to the County WMP. As a result of this meeting, once the Township submits its application for an amendment, the Department is prepared to process the Township's proposed amendment, as appropriate and in accordance with the WQM Planning rules so that the amendment may proceed in a timely manner.

**2. Comment:** The commenter states that the owners of Block 37, Lots 17.01 to 17.04, in Hopewell Township, also known as the Kooltronic property, are in general agreement with the future SSA mapping as delineated in the County WMP as it relates to the Pennington/Kooltronic Redevelopment Area. However, based on version 3.1 of the Landscape Project, the entire Kooltronic property should be included within the adopted SSA. The commenter indicates that a Habitat Suitability Analysis was submitted on behalf of the property owners which does not concur with the Department's determination to exclude a portion of Block 37, Lot 17.04, from the proposed SSA. (2)

**Response:** The Department and the County have received correspondence from both Hopewell Township and representatives of the Kooltronic property requesting that the entirety of the above referenced parcels be included in the SSA. Mercer County indicated to the Department that the owners of the Kooltronic property had provided to the County documentation concerning habitat studies and concept and redevelopment plans. The adopted Hopewell Township Map 3M-FWFSa within the Mercer County WMP currently shows large portions of the above referenced parcels in SSA. However, the areas at the southeast portion of Block 37, Lot 17.04 were excluded from the SSA due to their identification as ESA in accordance with N.J.A.C. 7:15-5.24. Inclusion of the southeast portion of this property into the SSA would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process, and so has not been accommodated as part of this adoption. As indicated in the proposal notice for this amendment, the Department and Mercer County Planning Department utilized the Landscape Project mapping available at the time, which was Version 2.1, when completing the wastewater service area delineation. 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.

**3. Comment:** The commenter asserts that there is an error in the SSA mapping with regard to the Kuser 130 LLC properties located in Hamilton Township at Block 2596, Lots 4, 5, 6, 8, 9, 10, and 26. The commenter states that the proposed SSA mapping shows that Lots 9, 8, 26, and a significant portion of Lot 10, are not included within the SSA. The commenter adds that the lots abut Route 130 and it seems appropriate to include them in the SSA. The commenter states that two Letters of Interpretation (LOI) issued by the Department's Division of Land Use Regulation (DLUR) were provided to the County which indicated that Lots 8 and 9, directly along State Highway 130, do not contain wetlands or any other regulated ESAs and, further, that there are wetlands identified on Lot 10 but not to the extent shown on the proposed Future Wastewater

Service Area of the Hamilton Township Water Pollution Control Facility. Based on these LOIs, the commenter states the SSA mapping to this treatment facility needs to be corrected to identify these lots as being completely within the SSA. (3)

**Response:** In the course of the development of the County WMP and in consultation with municipality, the County received comments regarding Block 2596, Lots 5, 10, and 26, from Hamilton Township indicating that a shopping center was proposed within these parcels. As a result of a review of the parcels proposed for the shopping center location, the Department determined that the portion of Lot 5 and 10 not constrained by wetlands could remain in the proposed SSA. The entirety of Lot 26 was constrained by ESA and was removed from the SSA as proposed. More information, such as an LOI, Treatment Works Approval (TWA) permit, or local approvals, was required to justify the inclusion of the entirety of Lot 26 and the excluded portions of Lots 5 and 10 in the SSA. Neither the County nor the Department has record of receiving correspondence or submitted LOIs from the commenter or any other private entity requesting inclusion of all the identified parcels within the SSA. In addition, as no information was received during the drafting of the proposed SSA with regard to Block 2596, Lots 8 and 9, the County did not include the lots in SSA in the proposed amendment. Therefore, the request to include the lots or portions thereof in SSA upon adoption of this amendment would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process.

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. Upon review of such an application, the Department will re-evaluate the site for environmental sensitivity pursuant to the WQM Planning rules.

**4. Comment:** The commenters request inclusion in the SSA of a 10-acre parcel at Block 3901, Lot 21, in Lawrence Township on Princess Road also known as the "Gayle" tract owned by CHS. The commenters indicate that the property along Princess Road was acquired by CHS in December 2005 as a proposed location for a regional medical center but that, for various reasons,

it was determined that the Princess Road location was not appropriate for the intended use and the new regional medical center was relocated to Scotch Road in Hopewell Township. The commenters further stated that there is existing sewer infrastructure in Princess Road and in an easement bordering the parcel to the west.

The commenters report that from the time of the acquisition of the subject property, CHS knew that the extent of development on the land would be affected by the wetlands regulations. The commenters provided an LOI issued by the Department on March 5, 1997, and an extension of the LOI that was granted on June 18, 2002. The commenters argue that, although the LOI extension expired on June 18, 2007, the LOI should have been subject to the Permit Extension Act (PEA) and extended automatically again.

The commenters assert that an independent engineer contracted by CHS visited the site and observed that, in accordance with current freshwater wetland regulations, the northwest portion of the site may be suitable for development to accommodate an office building of modest size but this would need to be confirmed with further engineering studies and the required application to the Department for a new LOI. The commenters request that the site remain in the SSA until such time that CHS can accomplish the required engineering. The commenters indicate that excluding this site from the SSA would be a serious hardship and result in a potential loss of significant investment, that CHS anticipates it will need the proposed office space for its expanding patient base, and that the expanded office space will benefit the region. (4, 11)

**Response:** This 10 acre property was excluded from the SSA pursuant to N.J.A.C. 7:15-5.24, due to the presence of on-site delineated wetlands contiguous to off-site wetlands which when combined are greater than 25 acres. The wetlands, as mapped, encompass the entire site and are adjacent to a larger mapped wetland complex to the south of the property. No structures currently exist on the site.

An LOI was issued by the DLUR (File No.: 1107-02-0004.1) in March 5, 1997, to the original property owners. The Department issued an extension of the LOI to June 18, 2007. However, in response to CHS's requests to extend the LOI through the PEA, it was determined that

additional, updated information was required. Specifically, DLUR staff found that the wetlands boundaries were no longer accurate due to a change in existing site conditions. The Department informed CHS on January 13, 2009, that a reevaluation of the existing conditions and on site wetlands was necessary. As noted in the original LOI, the Department's determination is subject to change if the information is no longer accurate, or as additional information is made available to the Department. Consequently this LOI was not extended by the PEA and is no longer valid. Because a valid LOI or an approved site plan with the delineated wetland lines as approved by the LOI does not exist for the site, the entire property was excluded from the proposed SSA.

Notwithstanding, the property was excluded from SSA and remains excluded from SSA upon adoption in accordance with the WQM Planning rules due only to the presence of mapped wetlands. 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 valid LOI can be submitted as part of the application to assist in determining the extent of proposed SSA so as to avoid wetlands areas as delineated on an approved LOI site plan.

**5. Comment:** The commenter states that TCNJ owns 170 acres of land in Hopewell Township and requests that Block 78.05, Lot 2; Block 78.06, Lots 23, 24, 90, and 111; and Block 78.09, Lots 22, 32, 102, and 103, be included in the SSA to allow TCNJ to plan for future use of the property and continue its mission to provide a public benefit to the State of New Jersey. The commenter indicates that the properties were included in the previously approved SSA and this was a factor in TCNJ's decision to purchase the land in 2000. The commenter states that although Hopewell Township passed resolution #05-117 on April 13, 2005, to support a proposed amendment to the Mercer County WQM Plan to remove all lands owned by TCNJ from the SSA, there is no apparent justification under the WQM Planning rules for the removal of the property from SSA. The commenter understands that, as recorded in the minutes of the April 13, 2005, Township Committee meeting, the resolution was passed in response to a settlement between Hopewell Township and ELSA, which required Hopewell Township to remove all properties not currently under contract for service with ELSA from the SSA. The commenter concludes that no other local planning objectives were used as a basis for the

removal. The commenter further states that an analysis conducted on behalf of TCNJ determined there are no ESAs that would exclude the collective properties from the proposed SSA. Citing *Rutgers vs. Paluso*, a New Jersey Supreme Court case, the commenter asserts that “[a]s a state institution, [TCNJ] deals directly with the State on issues related to development of College-owned land, is exempt from local land use planning ordinances and the State has jurisdiction over state college building approvals.” (5)

**Response:** Mercer County coordinated with Hopewell Township to delineate the proposed SSA within the Township when developing the draft WMP. Hopewell Township did not support the inclusion of TCNJ properties, as was evident in resolution #05-117, which resolved that “all lands owned by the College of New Jersey be removed from the existing SSA.” Furthermore, the Township informed the County that it would not support the inclusion of the parcels in SSA unless TCNJ first negotiates contractual agreements for future sewer service with ELSA. The proposed SSA mapping from Hopewell Township, therefore, removed the above referenced parcels from SSA with the exception of the three developed parcels at Block 78.06, Lots 24, 90, and 111, which were included in the proposed SSA. Consequently, the remaining parcels, Block 78.05, Lot 2; Block 78.06, Lots 23; and Block 78.09, Lots 22, 32, 102 and 103, were not proposed to be included in SSA.

Nonetheless, the inclusion of the properties in SSA upon adoption of this amendment would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. TCNJ is welcome to submit an application to the Department for a site specific amendment or revision, as applicable, to the Mercer County WQM plan to include these properties in SSA in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable.

It is further noted that, although P.L. 2011, c. 203, which expires on January 17, 2014, authorizes the Department to approve the inclusion of land in a SSA notwithstanding that existing treatment works may not currently have assured capacity to treat wastewater from such land, sewer service to any project is subject to contractual allocations between municipalities, authorities, and/or private parties would not be guaranteed by such an amendment if or when adopted.



6. **Comment:** The commenter indicates that currently no sewer service is available at Block 69, Lots 10, 13 & 14, located at the intersections of Route 31 and County Route 546, Hopewell Road, but sewer infrastructure is planned to be extended in the road adjacent to the property and that the properties are currently serviced by a septic system, not in keeping with current design standards. The commenter asserts that the parcels are not encumbered or ESAs as defined by N.J.A.C. 7:15-5.24, and that the subject property is immediately contiguous to parcels to the east and south designated for SSA within the future ELSA SSA. Further, as there are no known ESAs and there exists the potential for development/redevelopment along a main corridor of the community, the commenter requests the subject property be included within the SSA. (6)

**Response:** Mercer County has indicated to the Department that between 2008 and April 2013, as part of the process of developing the draft WMP, the County did not receive any correspondence from either the property owner or Hopewell Township requesting the referenced properties be included in the SSA. As the property locations are currently served by on-site septic systems discharging to groundwater less than 2,000 gpd, the parcels were identified as such on the proposed Hopewell Township Map 3M - FWFS, which is consistent with local planning objectives and initiatives.

The SSA cannot be revised to include the above referenced properties as part of this amendment as such a modification upon adoption would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. 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.

7. **Comment:** The commenter states that the SBMWA is trying to build an Environmental Center in Hopewell Township that will generate just over 2,000 gpd of wastewater. The Center will be the first in Mercer County to receive the Leadership in Energy and Environmental Design (LEED) Platinum certification. The commenter indicates that the SBMWA holds a draft New

Jersey Pollutant Discharge Elimination System (NJPDES) permit which is over a year old and that the application review period for a treatment works approval (TWA) is about to expire. The commenter urges the Planning Board and the Department to now adopt the Mercer County WMP before the TWA application expires. (6)

**Response:** The Department acknowledges the commenter's concerns. The Department and the County have worked in close cooperation to prepare the proposed WMP that addresses the planning initiatives and objectives of all affected municipalities and individual property owners. The Department and Mercer County have also worked diligently to develop and adopt this amendment in as timely a manner as possible.

**8. Comment:** The commenter objects to the exclusion from the SSA of an approximately 6 acre portion of a 65 acre tract at Block 11201, Lot 1, within the municipality of Princeton. The commenter maintains that the Department lacks the factual basis to establish and has erred in determining that the 6 acres should be excluded from the SSA on the basis that it is designated as endangered or threatened wildlife habitat. The commenter asserts that the Department has provided no scientific or technical support for the exclusion of the 6 acres located on this 65 acre property or the determination that the adjacent woodlands are suitable habitat for the Barred Owl.

The commenter states that IAS commissioned a consultant to perform a supplemental Barred Owl survey, currently in progress, by its consultant. The commenter supplied the interim results of this survey with the submitted written comments. The commenter asserts that the interim results of a field survey, which occurred in May and April 2013, confirm that Barred Owl is not utilizing the 6 acre portion of the 65 acre parcel or the surrounding woodlands. A final report summarizing the 2013 survey results will be prepared upon completion of the two final survey dates.

The commenter concludes that exclusion of the 6 acres from the SSA is arbitrary and capricious and constitutes a taking without due process of law. The commenter asserts that IAS maintains its position that the entire parcel should remain in the SSA and requests that Mercer County and

the Department refine the SSA mapping based on the ongoing and most recent studies completed by the consultant retained by the IAS. (8)

**Response:** Pursuant to N.J.A.C. 7:15-5.24(b)1, approximately 23 acres of mixed coniferous and deciduous forest cover on the undeveloped southern portion of the subject 65 acre tract (Block 11210, Lot 1) were originally removed from the previously approved SSA due to mapped habitat identified for Barred Owl in the draft SSA provided by the Department to Mercer County for the development of its WMP. All existing structures and landscaped areas surrounding the IAS complex located on the northern portion of this property, comprising of approximately 42 acres, were kept in SSA. Adjacent to the east, west and south of the 23 acres removed from the SSA lay approximately 900 acres of contiguous mixed forested lands also mapped as suitable habitat for Barred Owl and Bald Eagle.

In response to the 23 acres removed from the SSA in the draft WMP, IAS prepared and submitted to the Department and the County studies refuting the suitability of the habitat. Department staff from the DLUR, in coordination with the Endangered and Non-Game Species Program, reviewed the submitted information. On November 22, 2010, an on-site investigation was conducted by the DLUR. Based on this site visit, a review of related locational information for State listed species, past regulatory reviews, Barred Owl sightings in the area, and available literature on the species in-question, the Department determined that due to the site's habitat characteristics and landscape continuity with the larger, approximately 900 acres of wooded area adjacent to the property, the 23 acre parcel was a component of suitable Barred Owl habitat and, pursuant to the WQM Planning rules, was not returned to the SSA as requested by IAS.

The IAS requested that the Department reconsider this decision on July 20, 2011. Subsequently, the Department agreed to reevaluate the excluded 23 acre wooded area. After reevaluation, the Department concluded that maintaining an on-site patch of evergreen trees, approximately 6 acres in size, contiguous to an additional 9-10 acre off-site pine stand, located southwest of the property boundary, was necessary to the overall suitability of the forest patch for this species. Evergreen habitat is documented to be used by Barred Owl for both summer and winter roosting, thus this habitat type is of critical importance. The Department biologists determined that

development of the parcel in question would significantly reduce the size of the available winter/summer roost habitat within the associated forest complex and greatly impact the overall remaining suitability of this complex. Based on this guidance, the Department determined that, provided the 6 acre stand of mature evergreens was maintained on the subject property, the inclusion of the remainder of the parcel in the SSA may not result in an adverse impact to the suitability of the area for Barred Owl. Consequently, the Department excluded only this 6 acre portion of evergreens located on the 65 acre track from the SSA in the proposed WMP.

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.

**9. Comment:** The commenter questions why Block 2575, Lots 167 through 170, (Kuser Road property) within Hamilton Township, are only partially within the SSA. The commenter indicates that of the four lots, only Lots 167 and 169 remain within the SSA whereas all four lots were in the previously approved SSA. The commenter asserts that by ordinance, Hamilton Township has consolidated the four lots creating a single lot, slightly above 10 acres, which is the minimum for development purposes under the existing zoning. Therefore, the commenter indicates that the proposed SSA fails to recognize that the lots make up a single tract. The commenter states that the Department has issued all approvals and permits to develop the Kuser Road property as a proposed non-denominational church and that an application has been pending with the Hamilton Township Zoning Board for over two years. The commenter provides a Department-issued LOI, General Permit No. 11 and a Transitional Area Waiver Averaging Plan (File #1103-10-0001.1) authorizing the disturbance to wetlands on the proposed Kuser Road Fellowship Hall/Provost Tract. The commenter states that only recently did the property owner receive a letter from Hamilton Township indicating that the entire property was not within SSA. The commenter concludes that the SSA mapping fails to consider existing infrastructure located on either side of the property, both of which are serviced by sanitary sewer and the property owner would have no problem with the proposed mapping if it were to only follow the approved wetlands delineation. The commenter requests that the Department, Mercer County, and the Township amend the mapping to include the entire lot within the SSA. (9)

**Response:** As indicated in the comment above, Lots 167 and 169 are shown as within the adopted SSA for Hamilton Township. In accordance with N.J.A.C. 7:15-5.24, Lots 168 and 170 were removed from the SSA in accordance with N.J.A.C. 7:15-5.24. Specifically, wetlands and suitable habitat as mapped by the Landscape Project version 2.1, which the Department utilized for this proposal, were identified on Lots 168 and 170.

As the County did not receive the LOI or the General Permit No. 11 and Transitional Area Waiver Averaging Plan until March 15, 2013, after this amendment was proposed, the Department and County were unable to consider the approved delineated wetlands onsite or the footprint of the proposed development before determining the full extent of the proposed SSA for these parcels. In addition, as indicated by the commenter, to date, the proposed development has not received local planning approval, nor has the property owner received the necessary Department approvals for sanitary sewer connection and/or the construction of treatment works (TWA) to serve the proposed development. Consequently, the SSA delineated as described above does not include Lots 168 and 170.

The SSA cannot be revised to include Lots 168 and 170 as part of this amendment. Such a modification of the proposed SSA upon the adoption of the WMP would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process.

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. At such time, the Department will consider the new delineation of wetlands and the Landscape Project mapping, when reviewing the proposed amendment or revision.

**10. Comment:** The commenter advises the Department that Block 3, Lot 15, is mistakenly included within a "Habitat Corridor" as described in the footnote on the West Windsor Township Map 3M - FWFSa, dated June 2012, revised February 28, 2013. Specifically, the commenter

notes that the map notation describes the Habitat Corridor designation concerning an unoccupied bald eagle nest and former apparent flyway and lists parcels located within the restricted Habitat Corridor as established by Trident Environmental Consultants, Inc. However, the commenter contends that Block 3, Lot 15, is a cemetery owned by the Penns Neck Cemetery Association and located approximately 600 feet west of the described Habitat Corridor limit. (10)

**Response:** The Department acknowledges that Block 3, Lot 15, was erroneously added in the footnote regarding the Habitat Corridor on the West Windsor Township Map 3M - FWFSa. The property in question is not within the delineated Habitat Corridor associated with the currently unoccupied bald eagle nest. A review of the county parcel data and the "Plan Showing Bald Eagle Habitat Corridor of Lands of Princeton University Prepared for Princeton University," dated November 4, 2011, confirms that the approximately 0.2 acre plot is outside the established Habitat Corridor.

The Department has determined that such an edit to the map is a technical correction that will not effectively destroy the value of the public notice of the proposed amendment. As such, the Department has directed the County to revise the map footnote on West Windsor Township Map 3M - FWFSa to remove the reference to Block 3, Lot 15, as part of this amendment.

**11. Comment:** The commenter states that Carter Road CE, LLC, the owner of the private sewerage system located at the Hopewell Business Center (HBC), Carter Road, Hopewell Township, and requests assurance that the WMP has accounted for the full discharge referenced in its NJPDES Permit #NJ0000809. The commenter states that this permit authorizes the treatment and release of up to 0.128 million gallons per day (mgd) from Outfall 003A (0.080 MGD) and Outfall 004A (0.048 MGD). The commenter states that, as of today, the intensity of use at the property does not reach the permit limits, although the physical size of the existing buildings contemplates reaching the permitted discharge limits. The commenter asserts it is imperative that the WMP recognize and accommodate the entire permitted discharge capacity in the event the intensity and/or lawful use of the property expands in a manner consistent with local zoning. (12)

**Response:** The approved NJDPES permit (#NJ0000809) issued by the Department to Carter Road CE, LLC, to serve all facilities located at the HBC, authorizes the treatment and release of industrial and sanitary wastewater from two Discharge Serial Number (DSN) outfalls: 003A and 004A. The Department notes that each DSN outfall releases wastewater from a separate wastewater treatment plant. The permit indicates that DSN 003A discharges wastewater from a sanitary wastewater treatment plant that treats both sanitary and industrial wastewater. The authorized flow from DSN 003A is 0.080 mgd. DSN 004A is permitted to discharge industrial wastewater only, and has a permitted flow of 0.048 mgd. However, as the industrial process that resulted in discharge from this point has ceased, DSN 004A has been temporarily plugged. Therefore, the permit provides that this outfall remain inactive until further notice by the permittee. If, in the future, the facility has a tenant that requires the use of the outfall, prior to any release of industrial wastewater, the permittee shall request that the Department reactivate DSN 004A as described in item G(a) of Part IV of this NJPDES permit.

In support of a build-out analysis the County received documentation on behalf Carter Road CE, LLC, the property owners of HBC, which included a TWA issued by the Department to serve existing office space and a proposed day care center located at complex. In addition, Carter Road CE, LLC indicated to the County that future projected flow could result from use of the maximum building square footage as stipulated under local zoning. This total combined wastewater flow was determined to be 0.080 MGD. As this projected flow volume, calculated based a build-out analysis, is consistent with the approved permitted discharge flow from outfall DSN 003A for both industrial and sanitary waste streams, this value has been listed in the Hopewell Township Municipal Chapter, Table 1b DSW Facilities for Outfall DSN 003A.

With regard to the use of the inactive outfall 004A, the flow value of 0.048 MGD currently recognized in the NJPDES permit has been noted in the Hopewell Township Chapter, Table 1b that the discharge of this volume is contingent upon the permittee requesting that this outfall be reactivated as required in item G(a) of Part IV of the NJPDES permit. In the event the intensity and/or lawful use of the property expands in a manner consistent with the NJPDES permit, the WMP recognizes that outfall 004A may be reactivated.

**12. Comment:** The commenter requests that the West Windsor Township Map 3M - FWFSa be corrected to identify the appropriate designated SSA for Block 23, Lot 85, and Block 29, Lot 10, located along Old Trenton Road. The commenter states that two parcels currently served by the Hamilton Water Pollution Control Facility (HWPCF) were inadvertently included in the SBRSA STP SSA. (13)

**Response:** Based on the information provided by the Township, the Department determined that the above noted corrections to the SSA designations were warranted technical modifications. As such, the Department has directed Mercer County to make the above identified changes to the 3M map to show Block 23, Lot 8, and Block 29, Lot 10, are served by the HWPCF and not SBRSA.

**13. Comment:** The commenter indicates that both Block 33, Lots 36 and 40, located on Old Trenton Road within West Windsor Township contain existing dwellings currently served by the SBRSA but were omitted from the SSA. The commenter requests that the West Windsor Township Map 3M - FWFSa be modified to include Block 33, Lots 36 and 40, within the SBRSA River Road STP SSA. In addition, the commenter indicates that the West Windsor Township Map 3M - FWFSa should include the newly created boundary lines for Block 33, Lot 2.03, located on Village Road East. The newly created parcel boundary encompasses the existing farmhouse which is connected to the sewer system. The commenter indicates that as result of a recently approved subdivision plan Lot 2.03 was created out of an existing farm lot surrounding this farmhouse. (13)

**Response:** The Department determined that no dwelling is situated on Block 33, Lot 40. Furthermore, West Windsor Township has not provided documentation to the Department from the SBRSA confirming that the residence on Block 33, Lots 36, is currently served. The inclusion of Block 33, Lots 36 and 40, upon adoption of this amendment, therefore, would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process and, thus, the map has not been changed to reflect inclusion of Block 33, Lots 36 and 40.



However, the Department has determined that the new lot surrounding the farmhouse on Lot 2.03 is within the SSA as proposed. Therefore, the Department agrees that the new lot boundary lines for Block 33, Lot 2.03, surrounding the existing farm house can be included as a technical change that can be made upon adoption as it would not destroy the value of the public notice of the proposed amendment. The Department has directed the County to correct the West Windsor Township Map 3M – FWFSa to reflect the new lot boundary.

**14. Comment:** The commenter states that Block 29, Lot 21, located on Old Trenton Road within West Windsor Township contains an existing single family home and should be included in the SSA. The commenter expresses that, given the inclusion of other developed residential properties adjacent to Block 29, Lot 21, within the SSA, its limited size (3.81 acres), and that the surrounding larger parcels are farmland preserved, it would make sense to include this lot in the SSA as well, as there is no development pressure created by doing so. (13)

**Response:** The Department determined that the proposed West Windsor Township Map 3M – FWFSa included Block 29, Lot 21, within the SSA. However, through consultation with the County, the Department was able to ascertain that the commenter misidentified the parcel lot. The correct lot in question is Block 29, Lot 1 and not lot 21. Although Block 29, Lot 1, contains no environmental constraints, it was not included in the proposed SSA, and it is not currently served by sanitary sewer.

The inclusion of this lot into the SSA as part of the adoption of this amendment would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process.

This substantial change will require an amendment after WMP adoption, if and when desired. At that time, the Department will evaluate the site pursuant to the WQM Planning rules. 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.

**15. Comment:** The commenter requests that the proposed West Windsor Township Map 3M – FWFSAs be modified to include the existing structures and developed portions of Block 29, Lots 5 and 7, located on Old Trenton Road, and Block 30.01, Lot 21, on Line Road. The commenter states that existing single family homes and outbuildings are present on each parcel; Block 29, Lot 5 and Lot 7, have farmland preservation status with attached deed restrictions; and Block 30.01, Lot 21, is 5.51 acres with only a portion consisting of ESA. Given the inclusion of other developed residential properties adjacent to these parcels within SSA, the commenter requests that the developed portions of the lots be included in the SSA as well, as this would not create additional development pressure. (13)

**Response:** The lots specified above are currently served by individual septic systems, were not within the previously approved SSA, and were not originally requested by the Township to be included within the proposed SSA. Furthermore, as indicated by the commenter, Block 29, Lots 5 and 7, the two farm lots located on Old Trenton Road, are deed restricted farmland. Consequently, the current designation of areas to be served by septic systems with design flows of equal to or less than 2,000 gpd was appropriate at the time of the amendment proposal. With regard to Block 30.01, Lot 21, the County indicated to the Department that the Township did not request that this property be included in the SSA prior to the proposed amendment. As this property is also currently served by a septic system and portions of it were identified as ESA, it was not proposed for inclusion within the SSA.

The inclusion of the developed portions of the above requested lots into the SSA as part of the adoption of this amendment would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. Therefore, the request has not been accommodated.

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.

**16. Comment:** The commenter requests that the proposed West Windsor Township Map 3M – FWFSa be modified to include the following existing residential lots within the area known as Edinburg Village: Block 25, Lots 19, 21, 22, 44, and 75; Block 27, Lots 7.01, 7.02, 7.03, 9, 10, 11, 12, 13, 14, 16, 18, 19.01, and 19.02; Block 32, Lots 6.01, 6.02, 6.03, 7, 9, 11, 12, 14, 16, 17, 21.01, 21.02, and 21.03; and Block 33, Lots 13.01, 14.01, 15, 16, 17, 19, 20, 21, 30, 39, and 43. The commenter indicates that these parcels contain existing development, many of which have had prohibitively expensive septic repairs and/or rehabilitations due to site constraints. (13)

**Response:** All of the above listed parcels were designated as septic area in the previously approved West Windsor Township WMP. During the process of developing the County WMP, Mercer County received a request from West Windsor Township to include Block 27, Lot 9, into the SSA. However, due to ESA identified on a large portion of this 5.46 acre parcel, the lot was not included in the SSA. For all other parcels referenced above, Mercer County indicated that it received no other specific requests from the Township to include the properties listed above for the Edinburg Village area in the SSA during the drafting of the WMP. Although residential and commercial structures exist on the lots within Edinburg Village, some parcels are partially environmentally constrained. As a result, the sites were designated to remain as areas to be served by septic systems with design flows of equal to or less than 2,000 gpd at the time of the amendment proposal.

The inclusion of the requested lots into the SSA as part of the adoption of this amendment would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process.

This substantial change will require an amendment after WMP adoption, if and when desired. At that time, the Department will evaluate the site pursuant to the WQM Planning rules. 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.

**17. Comment:** The commenter requests that Block 33, Lot 38, in West Windsor Township be excluded from SSA and that the SSA delineation be reduced on Block 33, Lots 1.03 and 9, on Old Trenton Road. According to the commenter, Block 33, Lot 38, located on Edinburg Road is a municipally-owned property for which there are currently no long range plans for recreational development and therefore it should be excluded from SSA. Block 33, Lots 1.03 and 9, are parcels for which the Township has plans for recreational development, including restroom facilities. However, the commenter requests that the SSA delineation be limited to the Old Trenton Road frontage for a depth equivalent to that of adjacent Lot 10. (13)

**Response:** Mercer County indicated to the Department that West Windsor Township originally requested during the process of developing the Mercer County Map 3- FWSA that the referenced parcels be included within the proposed SSA. Consequently, as there were no prohibitions from including these parcels within SSA pursuant to the WQM planning rules, these parcels were included entirely within SSA. The Department does not object to the exclusion of Block 33, Lot 38, from SSA or the reduction of the SSA delineation on Block 33, Lots 1.03 and 9. However, changing the SSA delineation for these parcels upon adoption of the amendment would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. Therefore, the request cannot be accommodated.

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.

**18. Comment:** The commenter requests that Block 33, Lots 2.01 and Lot 3, located on Village Road East, West Windsor be removed from the proposed SSA. The commenter indicates that the Township has not received a specific request to include these parcels within SSA and inclusion within the SSA is not in accordance with the municipal Master Plan. The commenter states that West Windsor Township does not endorse extension of SSA designation for these parcels and further requests their removal from the SSA. (13)

**Response:** Mercer County indicated to the Department that during the process of developing the Mercer County Map 3- FWSA the Township originally requested these parcels be included in the SSA. Consequently, as there were no prohibitions from including these parcels within SSA pursuant to the WQM planning rules, these parcels were included entirely within the proposed SSA. The removal of the requested lots from the SSA upon adoption of this amendment would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process.

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.

**19. Comment:** The commenter urges the Department, despite the objection of Lawrence Township, to retain Block 5801, Lots 9 and 11, within the SSA. The commenter states that these properties, owned by The Lawrenceville School, were the subject of numerous meetings with Lawrence Township dating back to 1997 which resulted in correspondence and documentation supporting the inclusion of these properties within the SSA. Notwithstanding, on April 15, 2013, the Township Planning Board recommended to the Township Council that the lots be retained in the SSA. However, on April 16, 2013, the Township Council voted to direct the Department to remove the lots for the reason that inclusion is not consistent with the Township's 1995 Master Plan, wholly ignoring the Planning Board's recommendation. The commenter states that the Council's action seeking to reverse course on years of previous work is unreasonable, arbitrary, and capricious. The Department and Mercer County should wholly reject such conduct and the Council's request to exclude the subject properties.

The commenter concludes that The Lawrenceville School has been a resident of Lawrence Township for over 200 years and consistently has demonstrated good stewardship of its property and integrity and that the School intends to continue these practices. The commenter questions Lawrence Township's disregard of the record and abrupt insistence on provoking a dispute where none need occur. (14)

**Response:** During the process of developing the County WMP, The Lawrenceville School provided background information to the Department and the County which supported the properties' inclusion in the SSA. As a result, the County agreed to include the properties in the SSA, as reflected in the proposed WMP, the notice of which was provided on March 4, 2013, at 45 N.J.R. 479(a). As the commenter indicates, on April 16, 2013, after the proposal notice was published, Lawrence Township passed resolution #155-13 opposing the inclusion of these properties in the SSA on the basis that their inclusion is inconsistent with the Master Plan and requested that the parcels be removed. Lawrence Township passed this resolution in response to the request from Mercer County to provide a resolution consenting to the proposed amendment.

As discussed below in the Department's reply to Lawrence Township's response to the County's request for consent, the lots have not been removed from the SSA upon adoption of this amendment. Doing so would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. Consequently, Block 5801, Lots 9 and 11, remain within the SSA.

**20. Comment:** The commenter requests clarification as to the expiration date of the previously approved WMPs listed in Table 1- "Current WMPs That Remain in Effect," within the WMP for Mercer County, Volume I, County Summary. The commenter notes that on page 2 of the summary, in the "Previously Approved WMPs" within Mercer County section, the second paragraph reads "any local WMP previously approved by the [Department] and now incorporated into the county-wide WMP may remain in force and effect until six (6) years from the date of the adoption of this plan." The commenter further notes that Table 1- "Current WMPs That Remain in Effect" on page 3 indicates that the Pennington Borough WMP has an expiration date of October 18, 2015. The commenter notes that if the previously approved WMPs are fully incorporated into the Mercer County WMP, then the County would need only to prepare one WMP every six (6) years. The commenter states that Table 1 lists the dates the previously approved WMPs expired; therefore, it is not clear whether they will also be extended six (6) years from the date of the adopted Mercer County WMP. (15)

**Response:** Each individually listed previously approved WMP identified in Table 1 will have the same WMP update schedule as the adopted County WMP. To clarify this, the text under the "Previously Approved WMPs within Mercer County" section has been revised as follows: "any local WMP previously approved by the New Jersey Department of Environmental Protection (NJDEP) is now incorporated by reference as the applicable municipal chapters into the County-wide WMP and shall assume the same six-year WMP update schedule as the County-wide WMP." However, as the previously approved WMPs listed in Table 1 will technically still expire, the individual listed expiration dates have not been changed. The Department has determined the above text modification is a technical correction that can be made upon adoption of this amendment.

**21. Comment:** The commenter indicates that on Map 3 – FWSA within the WMP for Mercer County, Volume I, County Summary, the municipalities shown entirely as white areas, including Pennington Borough, appear to be those which have local previously approved WMPs, although there is no such designation within the map legend. The commenter recommends adding to the Map 3 legend a designation for these white colored areas indicating they represent those municipalities incorporated by reference as municipal chapters into the County-wide WMP. The commenter also notes that the previously approved Pennington Borough WMP included areas within Hopewell Township that are to be served by the SBRSA Pennington STP. These areas are shown in light grey on the County Map 3. As these areas in Hopewell Township have been approved as future SSA as part of the Pennington Borough WMP, it would be much clearer if the parcels within Hopewell Township to be served by the SBRSA are also shown as white. (15)

**Response:** As noted by the commenter, the municipalities shown entirely as white areas within Map 3 - FWSA of the WMP for Mercer County, Volume I, County Summary including Robbinsville Township, East Windsor Township and Pennington Borough, are those municipalities within Mercer County with previously approved local WMPs which have been incorporated by reference as the applicable municipal chapters into the County-wide WMP. Each of these current WMPs contains a Map - 3 titled Future Wastewater Facilities Service Areas (FWFSA). As these WMPs are incorporated into the Mercer County WMP by reference as

the applicable municipal chapters. Therefore, each respective WMP's Map-3 is to be used to illustrate the designated SSAs within these municipalities.

The Mercer County WMP, Map 3- FWSA identifies designated SSAs for areas that are not color coded white and identifies all remaining areas to be served by ISSDS, as specified on the corresponding legend. Because the legend corresponds to SSA designation, it would be inappropriate and may be misleading to indicate a separate designation for white areas, since white does not correspond to an SSA designation, and, rather, SSA designated for the white areas is to be found on the applicable WMP's Map 3 - FWWSA. Therefore, in lieu of adding a designation within the Map 3- FWSA legend of the WMP for Mercer County WMP contained in Volume I, County Summary, the Department has directed the County to include a footnote at the bottom of the map stating: "The following municipalities shown in white above are incorporated by reference as the applicable municipal chapters into the County-wide WMP: Pennington Borough, Robbinsville Township and East Windsor Township. For the Future Wastewater Service Area designations for these municipalities please refer to the Future Wastewater Service Area Map 3, in the respective previously approved WMPs." The Department has determined the above text modification is a technical correction and has been incorporated in the WMP as part of the adoption of this amendment.

The commenter's request that Map 3 – FWSA within the WMP for Mercer County, Volume I, County Summary, be revised so that areas within Hopewell Township to be served by the SBRSA Pennington STP, as approved in the Pennington Borough WMP, are also shown entirely as white has not been accommodated. The previously approved Pennington Borough WMP provided for the expansion of the SBRSA Pennington STP to serve the Hopewell Township School and other properties within Hopewell Township. Nonetheless, the current WQM Planning rules allow for the previously approved WMPs to be referenced as chapters for an entire municipality only. Therefore, Map 3 – FWSA within the WMP for Mercer County, Volume I, County Summary has not been changed in this regard and the areas in Hopewell Township remain shaded as gray and designated SSA to be served by the SBRSA Pennington STP.



**22. Comment:** The commenter requests various modifications to text and tables within the Volume I, County Summary section and Volume II, Municipal Chapters, for clarification and/or accuracy, as described in more detail in the response below. (15)

**Response:** The Department and Mercer County have considered the commenter's suggested edits and additions to the text and tables. The Department has determined that the requested modifications can be accommodated because they are appropriate and are technical corrections which would not destroy the value of the public notice of the proposed amendment. The Department has directed Mercer County to make the following corrections, as identified by the commenter, to the Volume I, County Summary and Volume II, Municipal Chapters sections:

- Pennington Borough STP has been included in Table 3 - Facilities Seeking Expansion, located on page 6, because, as the commenter notes, the previously approved SBRSA, Pennington Borough WMP provided for the future expansion of the Pennington Borough STP.
- Footnote 2 page 23, Table 8 - Sewer Service Area Evaluation by Facility and Municipality, next to Hopewell Township has been removed. The referenced numeral 1 has been placed in the Committed Flow column heading of this table and the added footnote at the bottom of the table reads: Committed flow date based on 2012 DMR data.
- All of the headings of the facilities tables within Appendix D (Tables D 1-7) have been corrected to read "Domestic Treatment Facility Serving Multiple Municipalities" from "Domestic Treatment Facility Serving Multiple Municipality."
- Within Table D-3, the facility table to the SBRSA, River Road STP, on page 1 of 2, at number 12, summary of population, the listing of both Princeton Borough and Princeton Township has been corrected to read only Princeton to be consistent with the Summary of wastewater flow (page 2 of 2) within the same table at number 13, which identifies only Princeton to reflect the recent incorporation of Princeton Borough with Princeton Township.

- Asterisks, determined to be extraneous, have been removed from Tables D-3, D-4, and D-5 (facility tables for the SBRSA River Road STP, SBRSA Pennington STP, and SBRSA Hopewell STP, respectively) in front of the numbers 12, Summary of population served, and 13, Summary of wastewater flow; and, in Table D-3, next to South Brunswick Township, Plainsboro Township and Franklin Townships.
- Within Volume II, Hopewell Borough Municipal Chapter, Build-out Table 2a, the total existing flow column has been modified to indicate that the listed volume is from the 2012 DMR data.
- Within Volume II, Hopewell Borough Municipal Chapter, Build-out Table 2a, under the column heading "Capacity Allocation/Permitted Capacity," a footnote, designated by the asterisk next to FCFS, has been inserted to explain that the acronym FCFS means "First Come First Served."
- Within Volume II, Hopewell Township Municipal Chapter, Build-out Table 2a, under the column heading "Capacity Allocation/Permitted Capacity," a footnote, designated by the asterisk next to Mbr, has been inserted to explain that Mbr means "Member Municipality."
- On page 2 under the Existing Infrastructure section, Hopewell Borough Chapter, the text has been corrected to reflect that there are no pumping stations in the Borough. The commenter points out that the Borough contains only a gravity main which flows to the SBRSA Hopewell STP.

**23. Comment:** The commenter indicates that, within the last 2 years, a pump and treat system on Somerset Street was approved for the Rockwell property, located on Block 18, Lot 4, within the Borough. The system treats contaminated ground water before discharging it to a nearby tributary. The commenter notes that the facility is not listed in Table 1b, Hopewell Borough NJPDES Permitted Surface Water Discharge Facilities on page 5. The commenter requests that the table be edited to include the facility. (16)

**Response:** As a result of this comment, the Department determined that an approved groundwater remediation treatment system (NJG01679160) at the Somerset Street location was issued to Rockwell Automation Inc. This system is for a remedial action required by the Department. Pursuant to N.J.A.C. 7:15-4.2(a), treatment works to abate an existing pollution problem are deemed consistent with the WQM plan and would not otherwise need to be identified in the WMP. However, the Department indicated to the County there is no detriment in listing this NJPDES permit in the table, but left it to the County's discretion to do so. The County opted to include this treatment facility in Table 1b.

**24. Comment:** The commenter notes that ELSA reviewed at length the Hopewell Township chapter of the draft Mercer County WMP. ELSA presently serves limited businesses and institutions in Hopewell Township including Janssen Pharmaceuticals, Bear Tavern School, Brandon Farms, Wellington Manor, Hopewell Grant, Hopewell Center, Merrill Lynch and Capital Health Systems. The commenter states that, as there is no overall agreement with Hopewell Township, each of these locations are served by a separate contract agreement between ELSA and the individual property owners. The commenter points out that, at this time, there also is an agreement with ELSA to serve the Briar Cliff project, which has yet to be built.

The commenter provides that ELSA is willing to serve the Route 31 Circle area and the Sansome property on the west side of Scotch Road in Hopewell via individual agreements, but asserts that the WMP should specifically note which areas in Hopewell are presently being serviced by ELSA STP. ELSA concluded that, although it is not obligated to serve any areas in Hopewell for which there is not presently a contract, ELSA wishes to preserve its ability to provide service to additional areas if acceptable contracts can be negotiated. (17)

**Response:** The Map 2M- Existing Wastewater Facilities Service Area contained in the Hopewell Township chapter illustrates areas presently connected and served by ELSA and/or approved by the Department through an issued TWA, which permits connection to the ELSA system. Therefore, areas that are presently being serviced by ELSA STP are specifically illustrated on Map 2M. The Hopewell Township Map 3M- FWFSFA is provided to show all areas within

Hopewell that are currently served or could be served by ELSA in the future if all State and local approvals can be obtained. Although the maps depict areas that could be served by ELSA, and P.L. 2011, c. 203, authorizes the Department to approve the inclusion of land in a SSA notwithstanding that existing treatment works may not currently have assured capacity to treat wastewater from such land, sewer service to any project is subject to contractual allocations between municipalities, authorities, and/or private parties would not be guaranteed by such an amendment if or when adopted. If in the future, ELSA wishes to provide service to a proposed project or location not delineated as SSA, any party may submit an application to the Department requesting an amendment or a revision to the Mercer County WQMP to do so.

**25. Comment:** The commenter requests edits to address omissions identified in the text and tables of Volume II, Ewing, Lawrence, Hopewell and West Windsor Townships Municipal Chapters, for clarification and/or accuracy, as described in more detail in the response below.

(17)

**Response:** The Department and Mercer County have considered the commenter's requested edits and additions to the text and tables. The Department has determined that all but two of the requested modifications can be accommodated because they are appropriate and are technical corrections which would not destroy the value of the public notice of the proposed amendment. The Department has directed Mercer County to revise the Volume II, Municipal Chapters sections of the WMP to correct the omissions identified by the commenter as discussed below. The two requested modifications that have not been accommodated are also discussed below.

- The statement "Ewing Township currently has no pumping stations" on page 2 of the Ewing Township Municipal Chapter under Existing Infrastructure has been corrected to reflect that Ewing Township does have pumping stations. As noted by the commenter, ELSA owns and operates seven ELSA pumping stations within the municipality, and a number of privately owned and operated pumping stations serve residential developments and school and office campuses within Ewing Township. The text now reads "Ewing Township currently has 7 pumping stations."

- The Ewing and Hopewell Township Municipal Chapters, Table 2b, Treatment Works Approvals, have been updated to include the Gardens at Birmingham (12-0249) and The Merrill Lynch Campus Buildings Numbers #16-19 (09-0038), respectively. The commenter's attached Department Wastewater Flow Summarization/ Quarterly Report for the period October 1, 2012, to December 31, 2012, supported that this information had been omitted from these tables.
- Text has been added in the Lawrence Township Chapter at page 2, Existing Infrastructure, to indicate that while there are six pumping stations throughout the Township, ELSA owns and operates three pumping stations in the Township, as noted by the commenter.
- Table 1b, NJPDES (DSW) Permitted Facilities within both the Lawrence Township and Hopewell Township municipal chapters of the WMP have been corrected to reflect that the HBC is not in Lawrence Township but instead in Hopewell Township, as the commenter noted and the Department confirmed. In addition, the Department also determined that the NJPDES permit for this facility is #NJ0000809; not #NJ0022110, which is issued to Educational Testing Service, located on Rosedale Road, Lawrence Township. Therefore, as a result of this comment, the Lawrence Table 1b NJPDES (DSW) Permitted Facilities has been corrected to indicate Educational Testing Services as the facility to which NJPDES #NJ0022110 is issued.
- The Township of Lawrence Municipal Chapter, Table 2b, Treatment Works Approvals has been revised to reflect that within the listed projects, as indicated by the commenter, Heritage Village at Lawrence has been connected for many years, Capital Health System is located in Hopewell Township, and there is no outstanding or proposed Rider University project. Consequently these projects have been removed from the table Lawrence Municipal Chapter, Table 2b.

- The title for Table 3 of the Township of Lawrence Municipal Chapter, which was mistakenly labeled "Hamilton Township Build-out by HUC11," as noted by the commenter, has been corrected to read "Lawrence Township Build-out by HUC11."
- The West Windsor Township Map 3M - FWFSa has been corrected to depict that Block 23, Lot 91, on Quaker Bridge Road in West Windsor is currently served by the ELSA and not SBRSA River Road STP as shown on the proposed map. To support this, the commenter provided a Department TWA to construct and operate treatment works for the subject property. As a result of this comment Map 3M for West Windsor has been revised as noted.

The Department has determined that two of the commenter's requested corrections are unnecessary. First, although the commenter states that ELSA is not aware of a Bristol Myers Squibb facility within Lawrence Township as listed on Table 1b NJPDES (DSW) Permitted Facilities of the Lawrence Municipal Chapter, the Department confirmed that the facility information for the Bristol-Myers Squibb Co. (NJ0027618), as listed in the Facilities Table 1b, is correct and is in fact located in Lawrence Township. Second, while the commenter states that Block 7.16, Lot 1, located at 4201 Quaker Bridge Road in West Windsor is in the process of being approved to discharge into the ELSA sewer system and should be included on the West Windsor Township Map 3M- FWFSa, the West Windsor Township Map 3M- FWFSa currently shows this parcel being serviced by ELSA, so no change to the 3M map regarding this parcel is required.

**26. Comment:** The commenter appreciates the availability of individual municipal existing wastewater facilities service area maps (Map 2M) and future SSA maps (Map 3M) within the comprehensive County-wide WMP, as some counties have not provided such analysis to help compare the changes between the existing and future SSA. The commenter notes that by sharing such information, Mercer County residents will be able to assess the impacts of the FWFSa mapping. (18)

**Response:** The Department acknowledges the commenter's appreciation for the availability of the WMP mapping information. The Department notes that existing and future SSA mapping is required to be included in all adopted comprehensive municipal or county-wide WMPs as specified under N.J.A.C. 7:15-5.20.

**27. Comment:** The commenter notes that the Mercer County WMP provides information as to the methodology implemented to designate areas to be served by septic systems. Specifically, the commenter highlights that vacant lands were evaluated to determine if existing sanitary collection systems without extensions were readily servable, whether comments were received from the municipality regarding consistency with local approved planning initiatives, or if a parcel was excluded in part or in whole from SSA due to the existence of ESAs. The commenter encourages the County and the Department to consider the use within these septic areas of alternative wastewater treatment technologies, which can reduce nitrate levels in the wastewater discharged. The commenter notes that such advanced wastewater treatment technology has been proven to be effective in the New Jersey Pinelands and, if permitted throughout New Jersey, would allow residential subdivision on one acre lots with no increased impact to water quality.

(18)

**Response:** Where the Department, County, and affected municipality have determined that centralized wastewater is inappropriate, the area has been assigned the wastewater management alternative for ISSDSs that discharge less than 2,000 gallons per day or septic systems. The density of development within this designation must be consistent with the HUC 11 nitrate dilution analysis, the approved local zoning, and planning objectives. The Department is aware of the use of advanced septic system treatment technology and in general is not opposed to its use if it is determined appropriate and feasible and can be approved, as necessary, under N.J.A.C. 7:14A and N.J.A.C. 7:9A. However, the application of alternative septic systems technologies to allow for increased density is not applicable to this amendment, and so is not addressed herein. Those areas that are designated for ISSDSs that discharge less than 2,000 gallons per day are, as stated above, consistent with municipal zoning and the nitrate dilution analysis. It is not the intent of the municipalities to increase densities in these areas higher than current approved zoning densities. Further, the applications of such technologies are an issue

specific to the requirements established at N.J.A.C. 7:9A and are reviewed for approval on an individual basis only and when deemed necessary.

**28. Comment:** The commenter states that the use of the nitrite dilution model watershed approach to determine the ultimate number and/or density of dwelling units required to meet the nitrate standard of 2mg/L within a HUC 11 will undoubtedly cross county as well as municipal boundaries. The commenter notes that, if a HUC 11 boundary includes more than one municipality, the total number of dwelling units would need to be allocated between each one. The commenter asserts that the Department did not take into consideration the implication of this before the standard was adopted. The commenter adds that a municipality may also need to change its zoning to be consistent with the allowable densities within the respective HUC 11. Therefore, if the result of the nitrate analysis ultimately determines that a municipality was required to adjust local zoning, the commenter encourages the Department to coordinate between affected municipalities and the various counties to amend their municipal Master Plan. The commenter states that this would be necessary so that the framework to promote land use patterns is established. The commenter concludes that, without such planning, the result will be incompatible land use programs between the State, county, and local government, and this is in direct conflict with the Governor's Executive Order 3. (18)

**Response:** The Department acknowledges that, pursuant to the WQM Planning rules at N.J.A.C. 7:15-5.25(e), a zoning adjustment may be necessary where the number of additional dwelling units exceeds the allowable number of dwelling units on a HUC11 basis. N.J.A.C. 7:15-5.25(e) specifically gives municipalities discretion to distribute the allowable number of additional dwelling units within the HUC 11. The Department agrees that the administrative coordination between separate political entities to reach such an agreement and the public process to approve a municipal zoning adjustment, including an update to a master plan, may be necessary. The Department has indicated to the county WMP entities that, if such a scenario was presented during WMP development meetings, the Department would be willing to coordinate between any affected municipality and county to assist in efforts to balance the requirements of the rule and the desire to achieve local planning objectives.



**29. Comment:** The commenter asserts that an important policy and procedural issue has been raised as a result of the Department's response to comments contained in the prior FWSA mapping adoption notices. Specifically, the commenter states that the adoption notice for the Somerset County FWSA map discusses the Department's determination to only adopt changes to the proposed mapping that were deemed "technical/administrative corrections or modifications" while requests for changes to include or exclude SSA were found to be substantial changes and were not made as part of the adoption of the Somerset County FWSA map. The Department further explains that making substantial changes to the proposed FWSA map would essentially require a new notice and public comment period.

The commenter notes that the importance of a public notice is appreciated; however, the commenter recommends the Department more clearly and simply explain, for the lay property owner who may or may not have engineering consultants and attorneys, the distinctions between "technical/administrative corrections or modifications" and "substantial changes." The commenter states that, more importantly, based on discussions with the regulated community, it had been 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 government for re-evaluation and then (hopefully) inclusion within future SSA. The commenter is aware of a number of incidences in which a request to be included in the sewer area, to be aligned with planning objectives and supporting documentation was submitted to the Department and WMP agency, but now it must undergo another regulatory process, i.e. the site specific amendment and revision process. (18)

**Response:** The Department has consistently explained, as it did above, 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 draft Mercer County SSA mapping on December 15, 2010. 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 sewer service area.

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. Requested changes compliant with N.J.A.C. 7:15 were made and included in the Preliminary Public Notice. This AO #2010-03 public comment process was in addition to and

occurred prior to the formal publication of the Preliminary Public Notice of the Mercer Wastewater Management Plan 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 wastewater management plan designating a sewer service area pursuant to the act. Thus, once the Mercer County Wastewater Management Plan submission was made to the Department on June 21, 2012 there was an opportunity for amendment and revisions to the sewer service area mapping.

**30. Comment:** The commenter maintains that the Department and Mercer County will be inundated with applications for site-specific amendments and revisions following the adoption of the County WMP. The commenter expresses that, based upon experience, the site specific amendment and revision process is very costly, resource intensive, and unnecessarily slow. Therefore, the commenter strongly urges the Department and County to abide by the timeframes and review process set forth in sections 6-8 of P.L. 2011, c. 203. (18)

**Response:** The Department fully intends to adhere to the specific review timeframes as required by law.

In addition to the specific comments addressed above, in response to Mercer County's request for consent to this proposed amendment, Lawrence Township, Hopewell Township, Princeton Township, and the Borough of Hightstown submitted resolutions to the County that either were conditioned upon the inclusion or removal of various parcels from SSA or provided comments to the table and text of the proposed WMP.

The Borough of Hightstown passed resolution No. 2013-93 which provided statements regarding its Municipal chapter of the proposed Mercer County WMP noting minor corrections and an item

of concern. The County and Department verified that the following are appropriate technical corrections and have been made upon adoption of this amendment:

- At Volume I, page A-10, Table II - Ordinances for Municipal Stormwater Management, the adoption date, June 6, 2005, for the Borough's Stormwater ordinances (Chapter 25, Stormwater Control), which was omitted, has been added.
- On page 2, Volume II of the Municipal Chapters, Hightstown Borough, Existing Infrastructure, the number of sewerage pumping stations was corrected to indicate 2 and not 1.
- On page 4, Volume II, of the Municipal Chapters Hightstown Borough, Table Ia "NJPDES (DGW) Permitted Facilities within Borough of Hightstown," for the Hightstown Borough Water Treatment Plant (NJG0101630), the receiving aquifer has been changed to Upper Raritan/Magothy and the permittee name has been corrected to specify the Borough of Hightstown.

In addition, the Borough objected to the listing of an existing flow of 0.866 MGD as the 12 month average of monthly average plant flow from the Hightstown Borough WWTP in Table 2a "Borough of Hightstown Build-out Table." The Borough resolution stated that 2011 was a wet year, Hurricane Irene occurred late in August, and plant flow records for the years before and after 2011 indicate the average monthly flow at the WWTP ranged from 0.6689 MGD to 0.618 MGD, well below the 0.866 MGD. The Borough requested the total existing flow be changed to reflect flows of 0.62 MGD during the typical year. The Department notes that the WQM Planning rules at N.J.A.C. 7:15-5.25(d)1i direct that the existing flows attributed to portions of the SSA that are connected to the facility be based on the monthly average over the most recent 12 months. Furthermore, calculating the existing wastewater flow from each respective STP, using the most recent 12 month average is most appropriate as it captures a full annual cycle and changes due to rainfall/groundwater Inflow and Infiltration (I&I) level fluctuations and, as such, is best suited for planning purposes to assess existing flow and potential capacity available to the STP. Also as a standard methodology, it reflects that the most current wastewater contributions

have been applied consistently for all proposed WMPs. Consequently 0.866 MGD has been maintained as the existing flow from the Borough of Hightstown WWTP shown in Table 2a.

The municipality of Princeton passed resolution No. 13-147 consenting to the amendment conditioned upon the inclusion of several properties into SSA. The resolution provided the following list of parcels currently connected to sanitary sewers that were inadvertently omitted: Hill Top Park (Block 4301, Lot 2), Greenway Meadows (Block 8301, Lot 1.07), Hinds Plaza/Parking Garage (Block 27.02, Lot 76), two single family homes on Rosedale Lane (Block 8601, Lots 6 and Lot 7), and the Friends School on Quaker Road (Block 10301, Lot 16). Subsequently, the Department received confirmation from the Princeton Sewer Operating Committee that the listed properties are, in fact, currently connected to the SBRSA River Road STP. As these locations are currently served, the inclusion of these lots within the SSA is a technical correction and the associated SSA mapping has been modified to include these parcels as part of the adoption of this amendment. The Department notes that the proposed County WMP, Map 3- FWSA included all existing facilities located on Greenway Meadows (Block 8301, Lot 1.07) a 53 acre municipal park; therefore, no change in the proposed SSA was necessary for this property.

The Princeton resolution also requested inclusion in SSA of five municipal parks that it states are intended to have restrooms facilities installed in the future: Veblen House (Block 2901, Lot 7); Marquand Park (Block 35.01, Lot 4), Harrison Street Park (Block 52.01, Lot 97), Quarry Park (Block 34.01, Lot 17), and Potts Park (Block 32.08, Lot 150). These lots are not currently connected to sewer service and have not been included upon adoption of this amendment. The inclusion of the requested lots into SSA would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process.

The Princeton resolution also requested that the SSA delineated for Block 11201, Lot 4, (IAS property) should follow the lot boundary to include the entire parcel. As discussed in the response to comment number 8 above, the Department excluded 6 acres of evergreens located on

the 65 acre IAS tract from the SSA due to Barred Owl habitat. Therefore, the SSA cannot be revised to include the 6 acres of the IAS property upon adoption of this amendment.

Lawrence Township adopted resolution No. 155-13 consenting to the proposed amendment provided that the SSA be revised to modify the designation of multiple parcels as part of the adopted amendment. The resolution sought inclusion in SSA of three municipal parks with potential for recreational use (Dyson Tract at Block 5101, Lots 8, 9 and 33; Nash Park at Block 502, Lots 3 to 38, and Block 503, Lots 17 to 24; and Colonial Lake Park at Block 2101, Lot 6); nine undeveloped residential parcels acquired by the Township through tax sale (Block 2302, Lots 30 and 41; Block 2304, Lot 1; Block 2305, Lot 5; Block 2306, Lot 41; Block 2308, Lot 16; Block 2317, Lot 5; Block 1314, Lot 4; and Block 2301, Lot 24); and two lots currently on septic (Block 5101, Lots 27 and 28). The resolution also sought removal from the proposed SSA of the following areas because their inclusion is not consistent with the Township's planning objectives: Block 6601, Lots 22 and 44; Block 5801, Lot 15 (Cherry Grove Farm); Block 5801, Lots 9 and 11 (portions of The Lawrenceville School); and residential lots at Block 5801, Lots 8, 12, 13, 14, 17, 20 and 22. None of the identified lots the Township seeks to include in SSA are currently serviced. Therefore, including them in SSA upon adoption of this amendment would constitute a substantial change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process. Likewise, the request to exclude from SSA areas proposed to be included cannot be accommodated.

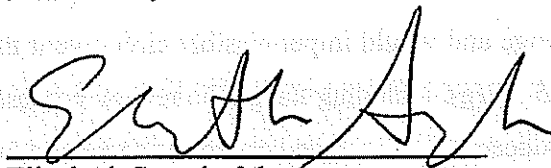
Hopewell Township adopted resolution No. 13-152 consenting to the proposed amendment conditioned upon the inclusion of Block 93, Lot 5.01 (Burroughs Track) and Block 93, Lot 3.01. However, the resolution noted that the inclusion of Block 93, Lot 3.01, into the SSA is contingent upon the Township taking title of this property. The resolution indicated that Block 93, Lot 3.01, is a 170 acre track to be transferred to the Township as part of a proposed agreement with the current property owners, and the lands may be used for various public and municipal purposes. The Burroughs Track is intended to be developed as part of a Township affordable housing plan. The properties listed in the resolution have not been included upon adoption of this amendment. Neither of the identified lots the Township seeks to include in SSA are currently serviced and the inclusion of the lots into SSA would constitute a substantial

change and would impermissibly circumvent the WQM Plan amendment procedures at N.J.A.C. 7:15-3.4(g), including the public review process.

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.

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. 58:11-A-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 WMP is available at the Department, Division of Coastal and Land Use Planning, 401 East State Street, Trenton, New Jersey, 08625.



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

10/9/13  
Date