



June 26, 2017

Gary J. Brower, Esq.
Attn: DEP Docket Number 05-15-04
New Jersey Department of Environmental Protection
Office of Legal Affairs
Mail Code 401-04L
401 East State Street, 7th Floor
P.O. Box 402
Trenton, NJ 08625-0402

RE: Freshwater Wetland Protection Act Rules
Proposal: PRN 2017-061
DEP Docket No. 06-17-03

Dear Mr. Brower:

I am writing on behalf of the Lower Raritan Watershed Partnership (LRWP) regarding the proposed revisions to the Freshwater Wetlands Protection Act rules. The LRWP has reviewed the proposed changes and believes that these revised rules are not in the spirit of New Jersey's Freshwater Wetland Protection Act or the Federal Clean Water Act. We believe the proposed rule revisions are preferential to development interests at the expense of landscape features that provide significant ecosystem services (e.g. drinking water, flood control/stormwater absorption, carbon storage, water and air pollution removal, local climate regulation, wildlife habitat, viewsheds and recreation). We believe that the proposed rule revisions raise significant Environmental Justice concerns for our most urban New Jersey communities, and likewise will compromise the ability of future generations of New Jersey residents to benefit from the ecosystem services of these valuable lands. As such we urge the New Jersey Department of Environmental Protection not to adopt the proposed rules.

The LRWP is New Jersey's newest watershed association, formed in 2014 to address legacy contamination and current pollution in the Raritan River and the Lower Raritan Watershed. Our mission is to conserve, enhance and restore the natural resources of New Jersey Watershed Management Area 9 (WMA9), the Lower Raritan Watershed. We see the proposed FWPA rules revisions as a retrenchment of the basic policy commitments of the FWPA as passed in 1987, and as establishing barriers to the successful future conservation, enhancement and restoration of our watershed. The LRWP is concerned with both procedural and substantive aspects of the FWPA rules revisions proposals. In what follows we highlight just a few of our concerns.

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Procedural Concerns

With respect to the proposed procedural changes, the LRWP believes that permitting processes designed to streamline and increase the speed of permitting for the benefit of the regulated community will have the result of compromising the efficacy, accountability, transparency, inclusiveness and openness of land use decision making in the state. While we are concerned with the reduction in processing time for all aspects of permit applications, we are most specifically concerned with procedural rule change N.J.A.C. 7:7A-9.2, which sets forth the duration of an authorization under a general permit. This proposal defines the term of a general permit as five years, with a possible one-time five-year extension *without required site condition review*. The proposal to remove the requirement for site condition review after expiration of the five year general permit would allow for the equivalent of a 10 year general permit for development activities in freshwater wetlands. The LRWP believes that failure to require site review and the extension of a general permit for two consecutive five year terms would compromise the ability of our communities to develop comprehensive land use policies that would take account of cumulative environmental impacts of development. Likewise provisions for what is essentially a 10 year general permit would compromise the ability of our municipalities to flexibly address a wide variety of community-related goals such as environmental justice, safety, meeting federal stormwater management (MS4) requirements , economic development, and improved air quality.

Also of procedural concern are rule changes that would lessen the amount of New Jersey Department of Environmental Protection oversight for the regulated community (proposed rule revisions at N.J.A.C. 7:7A-19.2a-g.). For example, determination of “completeness” of an application should be provided only on the completeness of an application. That is, completeness should not result by default if the Department fails to take action within 20 days.

Substantive Concerns

With respect to substantive aspects of the FWPA rules revisions proposals the LRWP has a number of significant concerns. These include concerns with proposed changes in mitigation rules requirements, with the proposal to replace the freshwater wetlands technical manual with the “New Jersey’s Landscape Project” report, with the revisions to the definition of “linear development,” and with reductions in buffers protection provisions. We provide statements of concern on some of these issues below:

- I. Mitigation Rules Revisions Proposals
 - a. Under recodified N.J.A.C. 7:7A-11.9(c)2, the Department is proposing to delete the requirement that offsite restoration, creation, or enhancement occur within the same HUC-11 or an adjacent HUC-11 as the disturbance.

The LRWP is opposed to this rule revisions proposal which would essentially release developers from restoring areas that are near other wetlands destroyed by development, allowing them to prioritize restoration within the larger estuary as opposed to within the impacted HUC-11. The proposal to allow mitigation to occur outside of the immediate area of

the impacts will result in fewer protections for the impacted area. We believe that this is an Environmental Justice issue in that managing for no net loss of ecological services must take into account the distinct ecological services provided by freshwater wetlands in urban areas where the majority of the state's residents live. These ecological services, specifically flood control/stormwater absorption, carbon storage, water and air pollution removal and local climate regulation, are qualitatively different in urban landscapes characterized by significant impervious cover issues.

- b. Under N.J.A.C. 7:7A-11.12(b) the Department is proposing a reduction in the 2:1 mitigation requirement to a 1:1 mitigation requirement

The LRWP believes that any reduction in the amount of restoration / mitigation required is not in keeping with the original intent of the FWPA, which set No Net Loss/Net Gain goals.

II. New Jersey's Landscape Project

At recodified N.J.A.C. 7:7A-3.2(c), the Department is proposing to replace the reference to the Division of Land Use Regulation's freshwater wetlands technical manual with a reference to the report "New Jersey's Landscape Project." The LRWP believes that this proposal warrants further study, especially as the "Landscape Project" materials do not reference hydrology. Wildlife habitat mapping for land use planning is an important consideration but should not necessarily be the sole determinant or even the preferential determinant of the capacity of our urban landscapes to sustain freshwater wetlands. The LRWP believes that especially in our urban areas we must also consider historic hydrology and hydrologic flows, which are not detailed in the "Landscape Project" document.

III. Linear Development

At recodified N.J.A.C. 7:7A-[5.2]7.2, the Department is proposing a change in language regarding the installation of utility lines in scrub shrub or emergent wetlands such that the installation of utility lines in these areas shall not be considered permanent disturbance. The LRWP believes that disturbance in these areas should automatically trigger mitigation requirements, just as disturbances in other areas do.

The LRWP is also concerned with allowances for an increase in permanent disturbance of freshwater wetlands, transition areas, and/or State open waters, including the area of vegetative clearing to be maintained underneath the utility line shall be to 0.5 acre and 20 feet. We feel this is excessive, particularly in those areas with few remaining freshwater wetlands.

In Summary

The Lower Raritan Watershed is one of the most developed and populated watersheds in the nation, and as such offers a cautionary tale for the rest of the state with respect to impacts of development of our freshwater wetlands. The LRW has long suffered the negative effects of freshwater wetlands loss and degradation. Since implementation of New Jersey's FWPA in the

early 1990s, several thousands of our urban wetlands in WMA9 have been converted to urban uses. Our Lower Raritan Watershed lost 3,461 acres of forested wetlands, 2,891 acres of emergent wetlands, 1,086 acres of agricultural wetlands, and 593 acres of disturbed wetlands (Sustainable Raritan River Initiative, 2016). Negative effects of wetlands loss in the LRW include an intensification of flooding of our communities and pollution loading in our Raritan River and area streams. These effects could be better managed with a landscape plan that prioritizes the protection of our remaining freshwater wetlands. However, Proposal: PRN 2017-061, the proposed FWPA rules, *reduce* the protections afforded to our wetlands. As many of New Jersey's waters - particularly those in our most urban areas - are currently not clean enough to meet federal water quality standards, it is important we do not further reduce these protections.

The LRWP believes that the proposed FWPA rule revisions stretch the boundaries of statutory interpretation, particularly with regard to the original goals of No Net Loss/Net Gain. We believe that the proposed rules, if implemented, will significantly and negatively alter the direction of state land use policy, especially in our most urban areas. We are past the point in New Jersey of being able to afford business-preferential environmental policies.

The LRWP asks that the NJDEP does not adopt the rules as proposed. The rules should be revised to instead increase the protections afforded to wetlands not reduce those protections.

Please do not hesitate to contact me with any questions or for follow-up:
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Sincerely,



Heather Fenyk, Ph.D., AICP/PP
Founder and President, LRWP