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ENVIRONMENTAL PROTECTION

LAND USE MANAGEMENT

DIVISION OF LAND USE REGULATION

Notice of Proposed Substantial Changes upon Adoption to Proposed Rule Amendments

Coastal Zone Management Rules

Wetlands

Proposed Amendment: N.J.A.C. 7:7 Appendix D

Proposed: April 6, 2015, at 47 N.J.R. 683(a).

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 12:3-1 et seq., 12:5-3, 13:1D-1 et seq., 13:9A-1 et seq., and
13:19-1 et seq.

DEP Docket Number: 02-15-03.

Proposal Number: PRN 2015-037.

A **public hearing** concerning this notice of proposed substantial changes upon adoption to proposed rule amendments will be held, in accordance with N.J.S.A. 13:9A-3, as follows:

Wednesday, May 18, 2016, at 10:00 A.M. until close of comments at:

Long Beach Township Municipal Building

6805 Long Beach Blvd.

Brant Beach, NJ 08008

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Submit comments by June 3, 2016, electronically at

<http://www.nj.gov/dep/rules/comments>. The Department of Environmental Protection

(Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Gary J. Brower, Esq.

Attn: DEP Docket No. 02-15-03

Office of Legal Affairs

NJ Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L; P.O. Box 402

Trenton, NJ 08625-0402

This proposal of substantial changes upon adoption to proposed rule amendments may be viewed or downloaded from the Department's website at <http://nj.gov/dep/rules>.

Take notice that the Department, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-4.10, is proposing a substantial change to the coastal wetlands maps promulgated in N.J.A.C. 7:7 based on a comment received on the proposal of amendments to N.J.A.C. 7:7-2.2 published on April 6, 2015 (see 47 N.J.R. 683(a)). The public comment period closed on June 5, 2015.

Through this notice of proposed substantial change on adoption, the Department is proposing to amend the proposed coastal wetlands boundary on Block 1.61, Lot 1, depicted in Coastal Wetlands Map 252-2112, to accurately reflect the extent of coastal wetlands on the

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property based on information presented by the property owner and a site inspection conducted by the Department on September 1, 2015. As indicated in the April 6, 2015, proposal, Block 1.61, Lot 1 currently contains both coastal wetlands mapped pursuant to the Wetlands Act of 1970 and freshwater wetlands. The originally proposed coastal wetlands boundary line on this parcel would have resulted in 0.74 acres of non-mapped coastal wetlands being classified as coastal wetlands. As a result of this proposed revision to the coastal wetlands boundary summarized below, 0.31 acres less of this property will be mapped as coastal wetlands than originally proposed in April 2015. However, there will still be an overall increase of 0.43 acres in the amount of mapped coastal wetlands on this property.

Summary of Public Comments and Agency Responses:

The Department received one comment on the portion of the coastal wetlands boundary proposed for substantial change from John M. Van Dalen, Esq., on behalf of the property owners of Block 1.61, Lot 1. A summary of his comment and the Department's response follows.

COMMENT: The Department's delineation on Block 1.61, Lot 1 is too broad and overstates the area of wetlands. In reality, there are two "prongs" of wetlands with a distinct area of uplands in between. It is agreed that the area of wetlands is larger than what is currently mapped, but the line being expanded to merge those two "prongs" into a contiguous area of wetlands is opposed. The actual extent of wetlands on this property is reflected by the following attached materials: photographs; a plan prepared by Horn, Tyson, & Yoder, Engineers-Surveyors-Scientists last revised October 7, 2011; data sheets from the 2011 delineation performed by Taylor, Wiseman &

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Taylor; data sheets from the verification of the 2011 wetlands delineation performed by EcolSciences, Inc., in 2015; photographs from the 2015 site visit that produced the data sheets; and a letter from the senior vice president of EcolSciences, Inc. confirming the accuracy of Horn, Tyson, & Yoder's delineation.

RESPONSE: The April 6, 2015, proposed coastal wetlands boundary change followed from the Department's grant of a petition for rulemaking from Kevin J. Coakley, Esq., on behalf of Mark Davies Builders & Developers LLC, David Collins and Esther Tessel Collins, Kim Lambert, and Michelle Forte (petitioners) (see 46 N.J.R. 2199(b); November 3, 2014). The petition requested that the Department amend Coastal Wetlands Maps 252-2112 and 259-2112 to exclude an approximate 2.2-acre portion of property designated as Block 1.63, Lot 1; Block 1.64, Lot 1; Block 1.66, Lot 1; Block 1.68, Lot 1; and Block 1.71, Lots 5 and 6 in the Holgate section of Long Beach Township, Ocean County, as the petitioners asserted that this portion of that property does not meet the definition of coastal wetlands set forth in the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. During the Department's initial investigation of the petitioners' property and adjacent properties, the owners of Block 1.61, Lot 1 did not grant Department staff permission to enter the property. As a result, the extent of coastal wetlands on Block 1.61, Lot 1 was determined based on an examination of aerial photography pre- and post- Superstorm Sandy, an examination of the draft 2012 DEP Land Use/Land Cover data, and a visual inspection of the lot from the petitioners' property and public roadways (see 47 N.J.R. 684). After publication of the April 6, 2015, proposal, the owners of Block 1.61, Lot 1 granted permission to the Department to enter and verify the extent of wetlands on this lot. Department staff, through a

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site inspection on September 1, 2015, verified the coastal wetlands boundary delineated by Taylor, Wiseman & Taylor in the plan "WETLANDS LOCATION PLAN LOT 1, BLOCK 1.61 TAX MAP SHEET #6 LONG BEACH TOWNSHIP OCEAN COUNTY, NEW JERSEY" Sheet 1 of 1, last revised October 7, 2011. As a result of the change to the coastal wetlands boundary on Block 1.61, Lot 1, 0.31 fewer acres on this lot will be mapped as coastal wetlands as compared to the originally proposed coastal wetlands boundary. However, as compared to the currently mapped coastal wetlands, there is an increase of 0.43 acres in area mapped as coastal wetlands on this property.

As a result of these changes, 0.78 acres currently mapped as uplands on Block 1.61, Lot 1, Block 1.71, Lot 4, and petitioners' property are now proposed to be mapped as wetlands on Coastal Wetlands Maps 252-2112 and 259-2112, with an area of approximately 1.15 acres currently mapped as coastal wetlands continuing to be proposed to no longer be classified as coastal wetlands. The delineation on Block 1.71, Lot 4, and on the petitioners' property is not affected by this notice of substantial change.

For illustrative purposes, the Department has prepared three maps, Figures 1, 2, and 3, which are available from the Department's Division of Land Use Regulation's website at nj.gov/dep/landuse/coastal/cp_map_prom.html. The maps contain an approximate representation of the existing and proposed wetlands boundaries superimposed on aerial photography of the area with Figure 1 depicting the existing coastal wetlands boundary, Figure 2 depicting the coastal wetlands boundary proposed in the April 6, 2015 proposal, and Figure 3 depicting the proposed coastal wetlands boundary incorporating the changes proposed to the boundary on Block 1.61, Lot 1 as summarized above. The proposed coastal wetlands boundary is depicted on

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an overlay to Coastal Wetlands Maps 252-2112 and 259-2112, available for review at the Department's Division of Land Use Regulation, 501 East State St., Trenton, NJ 08625, (609) 984-0162.

Effect of Proposed Changes on Impact Statements Included in the Proposed Amendments

The proposed substantial change on adoption will not significantly affect the impact statements set forth in the proposal. The proposed substantial change reduces the area mapped as coastal wetlands on Block 1.61, Lot 1 by 0.31 acres as compared to the amendments to the coastal wetlands maps proposed on April 6, 2015 (see 47 N.J.R. 683(a)). However, as compared to the existing boundary depicted in Coastal Wetlands Map 252-2112, the area mapped as coastal wetlands on Block 1.61, Lot 1 will increase by 0.43 acres. There will still be a net increase in the area mapped as coastal wetlands on the lot which will have impacts similar to those discussed in the proposal impact statements. Specifically, the proposed revisions to the coastal wetlands boundary do not affect the Department's conclusion that the reclassification of the freshwater wetlands as coastal wetlands may have a positive impact on the owners of the property, depending on the intended use of the property, because the wetlands would no longer be subject to the transition area requirements of the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A. The positive economic impact may be slightly greater as compared to the impact of the original proposal because there will be less area mapped as coastal wetlands, but instead considered uplands. Further, the Department does not anticipate a significant environmental impact because the wetlands on the property will continue to provide the functions of a wetland, including: primary food web for estuarine and marine ecosystems; breeding, nesting, feeding,

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and foraging habitat for wildlife; storm surge protection; flood water and sediment storage; and pollution filtration. The area subject to this substantial change is small; any impacts are expected to be minimal.

Full text of the proposed substantial change to the proposed amendments follows (note that, effective July 6, 2015, the list of coastal wetlands maps formerly codified as N.J.A.C. 7:7-2.2(c) is recodified as N.J.A.C. 7:7 Appendix D; see 47 N.J.R. 1392(a); July 6, 2015):

APPENDIX D

COASTAL WETLANDS MAPS

1. – 2. (No change.)

3. Ocean County:

(Agency Note: The following maps are proposed to be altered:

...

252-2112

...

259-2112

...)

4. – 11. (No change.)