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**ENVIRONMENTAL PROTECTION**

**LAND USE REGULATION**

**Notice of Action on Petition for Rulemaking**

**Extension of Time Period for Further Deliberation**

**Coastal Permit Program**

**Coastal Wetlands Maps**

**N.J.A.C. 7:7-2.2**

Petitioner: Mark Davies Builders & Developers LLC, David Collins and Esther Tessel Collins, Kim Lambert, and Michelle Forte.

**Take notice** that the Department of Environmental Protection (Department) has determined to extend, with the petitioners' agreement, the period for further deliberation of the petition for rulemaking described below, which was filed by Kevin J. Coakley, Esq., on behalf of Mark Davies Builders & Developers LLC, David Collins and Esther Tessel Collins, Kim Lambert, and Michelle Forte (petitioners).

The Petition

Petitioners David Collins and Esther Tessel Collins, Kim Lambert, and Michelle Forte are the current owners of property located in the Holgate section of Long Beach Township, Ocean County. Petitioner Mark Davies Builders & Developers LLC is the contract purchaser of the property and intends to develop the property for residential purposes. The petitioners request that the Department amend Coastal Wetlands Maps

252-2112 and 259-2112 to exclude an approximately 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 Holgate, Long Beach Township, Ocean County. The Coastal Permit Program rules at N.J.A.C. 7:7-2.2(c) provide that the coastal wetlands rules are applicable only in those areas shown waterward of the upper wetland boundary on wetlands maps listed in that subsection, including the two maps the petitioners request be amended. Petitioners assert that this portion of the property does not meet the definition of coastal wetlands in the Wetlands Act of 1970 at N.J.S.A. 13:9A-2 as the area is not a bank, marsh, swamp, meadow, flat, or other low land subject to tidal action, or an area connected to tidal waters whose surface is at or below an elevation of one foot above local extreme high water, and upon which may grow or is capable of growing the designated coastal wetland species.

Petitioners submitted a report with exhibits in support of the petition which they assert demonstrates that these areas, previously mapped as coastal wetlands, are no longer wetlands as they are not subject to tidal action and the majority of the area has an elevation greater than three feet above mean sea level with some areas as much as seven feet above mean sea level. Petitioners state that the report finds that much of the 2.2-acre area consists of unvegetated sand within which none of the plant species identified in the Wetlands Act of 1970 at N.J.S.A. 13:9A-2 is capable of growing. The report concludes that, based upon vegetation and topographic elevation, the area is not coastal wetlands. Further, based upon soils, hydrology, and vegetation, this area is not freshwater wetlands. Accordingly, the petitioners submit that a new wetland boundary should be established

excluding the approximately 2.2-acre area depicted on a “Wetlands Location Map” submitted as part of the petition.

The petition was received by the Department on March 10, 2014. Notice of receipt of the petition was published in the April 21, 2014, New Jersey Register. See 46 N.J.R. 712(b).

An initial notice of action indicating the need for further deliberation by the Department was published in the June 16, 2014, New Jersey Register. See 46 N.J.R. 1480(b).

#### The Department’s Response to the Petition

The Department conducted two site investigations in March and April 2014. Based on the information developed during those site visits, the Department has determined that additional site investigations are necessary to determine the extent of coastal wetlands on the property. Accordingly, pursuant to N.J.A.C. 1:30-4.2(b), the Department has negotiated and reached an agreement with the petitioners for a 60-day extension of the deadline established pursuant to N.J.A.C. 1:30-4.2(a)3 to either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days of initially referring the petition for further deliberation. The extended date for further action on the petition is therefore October 6, 2014.

A copy of this notice has been mailed to the petitioners in accordance with N.J.A.C. 1:30-4.2.