

THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 3, 2014 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE NOTICE, THE OFFICIAL VERSION WILL GOVERN.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

LAND USE REGULATION

Notice of Action on Petition for Rulemaking

Coastal Permit Program rules, N.J.A.C. 7:7

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 grant 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

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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.

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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)). A notice of action extending the time period for further deliberation on the petition by the Department by 60 days, as agreed to by the petitioner, was published in the September 2, 2014, New Jersey Register (see 46 N.J.R. 1908(b)).

The Department's Response to the Petition

The Department conducted site investigations on March 31, April 23, and September 9, 2014. Based on these investigations, the Department has determined that a portion of the coastal wetlands located on the property has been lost as a result of overwash from Superstorm Sandy. Specifically, Superstorm Sandy caused the deposition of sand from the Atlantic Ocean beach and dune system which resulted from the rush of water over the crest of the beach berm and dune into the wetlands onsite. This overwash altered the topographic elevations of the site and vegetation such that a portion of the site no longer meets the definition of a coastal wetland pursuant to the Wetlands Act of 1970.

Therefore, the Department has determined to propose to revise coastal wetlands maps 252-2112 and 259-2112 to reflect the area that the Department has determined from its investigations of the site does not continue to meet the definition of coastal wetlands.

Because the coastal wetlands maps are promulgated by rule, the Department must undertake rulemaking to revise the maps. The rulemaking will describe the extent of the area determined to no longer meet the definition of a coastal wetland and will provide an

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opportunity for public comment on that determination. In accordance with the

Administrative Procedure Act and the Office of Administrative Law's implementing

rules at N.J.A.C. 1:30-4.2, the Department must initiate this rulemaking within 90 days of granting the petition.

A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-4.2.