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ENVIRONMENTAL PROTECTION

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking

Coastal Zone Management Rules, N.J.A.C. 7:7

Request for amendments related to construction/reconstruction of dredged material facilities/confined disposal facilities

Petitioners: Martha Steinberg, Gamal el-Zoghby, Michael Knight, Ricardo Valdes, Michael Pierro, Michele Pierro, David Fox, Andreas Beutler, Michaela Banck, the New Jersey Conservation Foundation, and Environment New Jersey

Take notice that on October 21, 2015, the Department of Environmental Protection (Department) received a petition for rulemaking from R. William Potter, Esq. on behalf of Martha Steinberg, Gamal el-Zoghby, Michael Knight, Ricardo Valdes, Michael Pierro, Michele Pierro, David Fox, Andreas Beutler, Michaela Banck, the New Jersey Conservation Foundation, and Environment New Jersey (petitioners). Petitioners Martha Steinberg, Gamal el-Zoghby, Michael Knight, Ricardo Valdes, Michael Pierro, Michele Pierro, David Fox, Andreas Beutler, and Michaela Banck are residential property owners on Dock Road, Eagleswood Township, Ocean County. The petitioners request that the Department amend three sections of the Coastal Zone Management (CZM) Rules, N.J.A.C. 7:7. Specifically, petitioners request that the Department impose a buffer between confined disposal facilities (CDF) and residential, recreational and critical habitat areas; restore the “10-year rule” which would prohibit the siting of dredged spoil facilities on a former dredged material disposal site if it has not been used for that purpose in the past 10 years; and eliminate provisions that allow construction of facilities, including a dredged material disposal facility, to occur without CAFRA review if the new development will be built within the “footprint” of a pre-existing development.

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The petitioners indicate that construction of regional dredged material disposal facilities, known as CDFs, such as one planned in Eagleswood Township, subject those in the area to noxious odors, airborne dust containing silica and other respiratory irritants, which places their health and quality of life at risk, and also renders their properties virtually unmarketable. To protect coastal homes from experiencing this type of harm and to protect critical habitat from destruction or damage, petitioners assert that three amendments to the CZM rules are necessary.

First, petitioners request that the CZM rules be amended to establish a minimum distance or buffer that would prohibit the siting of a CDF within 2,000 feet of existing residential, recreational areas or critical habitat areas. Petitioners suggest this amendment should be accomplished by adding a definition of “inherently incompatible land uses” at N.J.A.C. 7:7-1.5 and amending N.J.A.C. 7:7-15.12(b).

Second, petitioners request that N.J.A.C. 7:7-9.27, Wetlands, be amended at (h) to reflect the requested buffer zone between areas receiving dredged materials and residential, recreational or critical habitat areas and also to require that the site that is to receive dredged material must have been used for such placement within the past 10 years.

Third, the petitioners request that the definition of the term “footprint of development” at N.J.A.C. 7:7-1.5 be amended to provide that, in addition to reconstruction being limited to the

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horizontal extent of previous development, any reconstructed development be no taller than the structure previously located on the footprint.

Petitioners assert that the restriction on the proximity of dredged material facilities to residential, recreational and critical habitat areas is necessary because even strict conditions cannot effectively eliminate potential impacts including health hazards from contaminated airborne dust and vermin infestation, displacement/destruction of critical plant and animal habitat areas, aesthetic injuries resulting from views being blocked by berms, excessive truck traffic when materials are eventually mined for beneficial reuse which will also damage sanitary sewers and road beds, contamination of potable water supply, reduction in property value and the ability to market homes or property, and general loss of quality of life.

Petitioners owning property on Dock Road in Eagleswood Township assert that what they identify as the “10 year rule” was part of the Coastal Zone Management rules at N.J.A.C. 7:7E-3.27(g)1 when they purchased their homes and that they relied on this rule to prohibit a CDF from being placed across the road from their homes since the site had not been used for disposal of dredged material since 1983. Under the prior rule, reuse of former dredged material disposal sites for continued dredged material disposal was conditionally acceptable provided enumerated criteria were met including “1. The site has been used for dredged material disposal within the past 10 years.” Petitioners assert they and similarly situated owners were harmed by revocation of the former rule as they are now required to affirmatively disclose that the property across the

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street, which appears to be open space/critical habitat area, could be reused for dredged material disposal at any time, even if the site has not been used for many years and has reverted to nature. Petitioners assert that the “10 year rule” provides actual notice to potential purchasers of property near a former dredge site that has not been used for over 10 years that re-use of the former dredged material management area is not acceptable and that the “10-year rule” is necessary.

Finally, petitioners assert that amendment of the definition of “footprint of development” to eliminate the exemption from CAFRA review of the construction or reconstruction of “the building, structure, or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the pre-existing development” is necessary because the exemption allows construction of structures such as a high-rise hotel without any CAFRA permit review as long as it is within the same footprint of a much smaller previous structure such as a motel. Similarly, the exemption allows construction of a much larger and functionally expanded dredged material disposal “dumpsite” on a much smaller abandoned site as long as it is built on the same horizontal footprint of the abandoned site, as is planned on Dock Road.

Petitioners provide suggested rule language to implement the requested changes and assert that the Department has adequate statutory authority to make the requested changes.

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This notice and the full text of the petition filed in this matter are available on the Department's website at <http://www.nj.gov/dep/rules/petition.html>.

In accordance with N.J.A.C. 1:30-4.2, the Department will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.