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## **ENVIRONMENTAL PROTECTION**

### **LAND USE MANAGEMENT**

#### **Coastal Zone Management**

#### **Coastal Wetlands Maps**

#### **Adopted Amendment: N.J.A.C. 7:7 Appendix D**

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

Notice of Proposed Substantial Changes upon Adoption to Proposed Amendment: April 4, 2016, at 48 N.J.R. 543(a).

Adopted: September 16, 2016, by Bob Martin, Commissioner, Department of Environmental Protection.

Filed: September 20, 2016, as R.2016 d.136, **with substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-4.10.

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.

Effective Date: October 17, 2016.

Expiration Date: November 14, 2021.

The Department of Environmental Protection (Department) is adopting amendments to boundaries reflected on coastal wetlands maps applicable to the Holgate section of Long Beach Township, Ocean County, promulgated under and listed in the Coastal Zone Management (CZM) Rules, N.J.A.C. 7:7. Since the original proposal of these amendments on April 6, 2015 at 47 N.J.R. 683(a) as amendments to the Coastal Permit Program rules, the Coastal Permit Program rules and the Coastal Zone Management Rules were consolidated and amended. As

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part of that rulemaking, the list of coastal wetlands maps, formerly codified at N.J.A.C. 7:7-2.2(c), was recodified as N.J.A.C. 7:7, Appendix D in the consolidated Coastal Zone Management Rules (47 N.J.R. 1392(a)). This adoption reflects the Department's determination of the current extent of coastal wetlands reflected on Coastal Wetlands Maps 252-2112 and 259-2112. As a result of this adoption, 1.15 acres previously mapped as coastal wetlands are now classified as uplands and 0.78 acres previously mapped as uplands are now mapped as coastal wetlands on Coastal Wetlands Maps 252-2112 and 259-2112.

As indicated above, on April 6, 2015, the Department proposed amendments to coastal wetlands maps applicable to the Holgate section of Long Beach Township following a petition for rulemaking. The proposed amendment impacted wetlands mapping of six parcels; four covered by the petition for rulemaking and two other parcels containing coastal wetlands reflected on the coastal wetlands maps that were analyzed as part of the review of the petition for rulemaking. On April 4, 2016, the Department published a notice of proposed substantial changes upon adoption to the proposed amendments in response to a comment received during the comment period on the original notice of proposal concerning the accuracy of the revised coastal wetlands boundary proposed on Block 1.61, Lot 1 (see 48 N.J.R. 543(a)). Through the notice of substantial changes, the Department proposed to adjust the coastal wetlands boundary on this property, as reflected on Coastal Wetlands Map 252-2112, based on information presented by the property owner and a site inspection conducted by the Department on September 1, 2015.

The Department is adopting the amendments proposed on April 6, 2015, as modified through the April 4, 2016 notice of substantial changes.

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**Summary of Hearing Officer's Recommendation and Agency Response:**

The Department held a public hearing on the notice of proposal on Thursday, May 7, 2015, at the Long Beach Township Municipal Building, Brant Beach, Ocean County. Ms. Virginia Kop'kash, Assistant Commissioner, Land Use Management, was the hearing officer for this public hearing. Nine persons provided oral comments at this public hearing.

The Department held a public hearing on the notice of substantial changes on Wednesday, May 18, 2016, at the Long Beach Township Municipal Building, Brant Beach, Ocean County. Ms. Kimberly Springer, Coastal Rule Manager, Office of Policy Implementation, was the hearing officer for this public hearing. Ten persons provided oral comments at this public hearing.

The hearing officers recommended that the amendments to Coastal Wetlands Maps 252-2112 and 259-2112 be adopted with the change described in the notice of substantial changes upon adoption. The Department accepts the recommendation. The hearing records are available for inspection in accordance with applicable law by contacting:

Office of Legal Affairs

Attention: DEP Docket No. 02-15-03

Department of Environmental Protection

401 East State Street, 7th floor

Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

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This adoption document can be reviewed or downloaded from the Department's website at [www.nj.gov/dep/rules](http://www.nj.gov/dep/rules).

**Summary of Public Comments and Agency Responses:**

The original notice of proposal was published on the April 6, 2015. The comments received during the 60-day comment period (which closed on June 5, 2015) are summarized below, grouped in separate sections depending on whether or not the comment prompted a modification to the original notice of proposal in the notice of substantial changes discussion above.

**Comment Received During Initial Comment Period Giving Rise to a Notice of Substantial Changes upon Adoption**

One comment was received on the original proposal from John M. Van Dalen, Esq. of Van Dalen Brower, L.L.C., submitted on behalf of Susan and Mark Shapiro, prompting the Department to publish the notice of substantial changes upon adoption referenced above. The comment and the Department's response follows.

1. COMMENT: The Department's delineation on Block 1.61, Lot 1 (Shapiro property) 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 commenter submitted materials to demonstrate the extent of

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wetlands on the property. The materials submitted were: 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 & 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) (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 Shapiros did not grant Department staff permission to enter the property. As a result, the extent of coastal wetlands on the Shapiro property 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'

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property and public roadways (47 N.J.R. 684). After publication of the April 6, 2015, notice of proposal, the Shapiros granted permission to the Department to enter and verify the extent of wetlands on this lot. Department staff, through a 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 Department's inspection and subsequent proposal to amend the coastal wetlands boundary on the Shapiro property through the notice of substantial changes upon adoption, 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 mapped coastal wetlands prior to this adoption, 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 previously mapped as uplands on Block 1.61, Lot 1, Block 1.71, Lot 4, and petitioners' property are now mapped as wetlands on Coastal Wetlands Maps 252-2112 and 259-2112. In addition to the area of approximately 1.15 acres no longer classified as coastal wetlands pursuant to the original proposal, the delineation on Block 1.71, Lot 4, and on the petitioners' property was not affected by the notice of substantial change.

For illustrative purposes, the Department 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](http://nj.gov/dep/landuse/coastal/cp_map_prom.html). The maps contain an approximate representation of the wetlands boundaries that existed prior to the adopted changes and the amended wetlands boundaries superimposed on aerial photography of the area with Figure 1 depicting the coastal

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wetlands boundary existing at the time of the notice of proposal, Figure 2 depicting the coastal wetlands boundary proposed in the April 6, 2015 notice of proposal, and Figure 3 depicting the proposed coastal wetlands boundary incorporating the changes proposed to the boundary on the Shapiro property as summarized above. The amended coastal wetlands boundary is depicted on 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.

### **Comments Received During Initial Comment Period Not Giving Rise to Changes in the Rule Proposal**

In response to the April 6, 2015, publication of the initial proposal, the Department received a number of comments that did not give rise to modifications to the notice of proposal.

These comments were received from:

1. John Atkinson
2. James Balbo
3. Jaime Baumiller
4. Tom Beatty
5. Deborah Bouchard
6. Susan K. Clark
7. Karen Clews
8. Gladys Cook
9. Thomas Craig

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10. Kim Cuttle
11. Marie D'Anna
12. Susan Dickey
13. Kathleen Donnelly
14. Timothy Feeney
15. Laura Goffman
16. Toni Granato, Sierra Club
17. Kyle Gronostajski, Alliance for a Living Ocean
18. Teresa Hagan
19. Mark Hannon
20. Christopher Harbourt
21. Beth Hausman
22. Marianne Haviland
23. Allison Hayden
24. Helen Henderson, American Littoral Society
25. Margit Meissner-Jackson, Sierra Club of Ocean County
26. Dorothy Jedziniak
27. Ted Jedziniak
28. Betty Jelich
29. Carol Jelich
30. Mary Lee Jones
31. David Jones

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32. Yanni Kaloudis

33. Lorraine Kane

34. Kevin Kelly

35. Stasia Krebushevski

36. Dean Lundahl

37. Holly Muia

38. Louise Neal

39. Maryanne O'Dowd

40. Morgan Pedrick

41. Noreen Pendzick

42. Jean Public

43. Allison Reid

44. Susan Schaeffer

45. Douglas Shearer

46. Jennifer Streitwieser

47. Erik Streitwieser

48. Komandur Sunder Raj

49. Elizabeth Toler

50. Frank Walsh

51. Bethany Ward

52. Kurt Williams

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These comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

Public notice/public participation in rulemaking

2. COMMENT: It appears that the haste of the Department's investigations may have been intentional in order to allow the local developer to bring the application of subdivision and development of the petitioners' property before the Long Beach Township Land Use Board in a January 2015, session when many local homeowners, who are not year-round residents, were unavailable to attend. It also appears that the weekday 10:00 A.M. public hearing held by the Department was timed to effectively minimize attendance of working people. (45)

RESPONSE: As explained in the summary of the notice of proposal at 47 N.J.R. 683, this rulemaking was undertaken in response to a petition for rulemaking submitted by Kevin J. Coakley, Esq., on behalf of Mark Davies Builders & Developers LLC, David Collins and Esther Tessel Collins, Kim Lambert, and Michelle Forte on March 10, 2014. Subsequent to receipt of the petition, the Department conducted a thorough review to determine if any changes were warranted based on the definition of coastal wetlands in the Wetlands Act of 1970 (Act), N.J.S.A. 13:9A-1 et seq., at 13:9A-2 and the extent of any area that would be included within the revised boundaries to be proposed through rulemaking. As indicated in the notice of proposal Summary, the Department's review included multiple site inspections, on March 31, 2014, April 23, 2014, and September 9, 2014, before the petition was granted and one, on December 3, 2014, after the petition was granted but before the notice of proposal was filed for publication. The notice of proposal was thereafter published on April 6, 2015. The Department's rulemaking

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process, thus, followed its own timeline. Any action the proponent of the petition took before the local zoning board was outside of the Department's rulemaking process.

The public hearing on a rule is scheduled in accordance with the timeframes of the rulemaking process. It must be held within the public comment period and at least 15 days after publication of notice. It is difficult to schedule public hearings at times that will work with all commenters' schedules. The public hearings on these coastal map changes were held at a location in the vicinity of the affected property and at a time intended to facilitate attendance. The Department also provided extensive advance notice of the public hearings. The notice of proposal was published in the April 6, 2015 New Jersey Register. The Department held the public hearing on the notice of proposal on Thursday, May 7, 2015, at 10:00 A.M. at the Long Beach Township Municipal Building. Notice of the hearing was published in the notice of proposal, as well as on the Department's website, and was sent to media outlets and to the Department's rulemaking listserv. In addition, the Department published notice of the public hearing in the Asbury Park Press twice each week for the three weeks prior to the hearing. The notice of substantial changes on adoption, further modifying the coastal maps, was published in the New Jersey Register on April 4, 2016. The Department held a public hearing on the notice of substantial changes on Wednesday, May 18, 2016, at 10:00 A.M. at the Long Beach Township Municipal Building. Notice of that public hearing was provided by the same means that notice of the public hearing on the original notice of proposal was provided.

Support for the Revisions to Coastal Wetlands Maps 252-2112 and 259-2112

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3. COMMENT: The changes to the coastal wetlands maps reclassifying a portion of the petitioners' property from wetlands to uplands are fully supported. (45)

4. COMMENT: The overwash area is no longer wetlands as defined by the Wetlands Act of 1970, and, therefore, the notice of proposal to revise the coastal wetlands maps is supported. (10)

RESPONSE TO COMMENTS 3 AND 4: The Department acknowledges the commenters' support.

Oppose revisions to Coastal Wetlands Maps 252-2112 and 259-2112

5. COMMENT: The revisions to the coastal wetlands boundary of Coastal Wetlands Maps 252-2112 and 259-2112 are opposed, as the reclassification of a portion of the wetlands on the petitioners' property will result in the development of the site. The changes to the coastal wetlands maps are short-sighted and do not consider the impacts of development on the surrounding community, Barnegat Bay, and wildlife. Further, development within the overwash area is opposed as it will increase runoff, exacerbate flooding in the area, and will put the public at risk during future storm events. Long Beach Island is overcrowded and overdeveloped and in light of the damage caused by Superstorm Sandy, additional development in Holgate is opposed. The wetlands on the Holgate property are important and must be preserved. (1-8, 11, 13, 14-16, 18, 19, 21, 22, 23, 25-27, 29-32, 37, 38, 40, 42- 45, 48, 50, and 52)

6. COMMENT: Additional building on a barrier island will create future liability for taxpayers; opportunistic capitalism does not benefit anyone especially as new development remains unused. (2)

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7. COMMENT: While the revisions to the coastal wetlands maps seem small, they will make it easier to obtain permits. The consequences of this rulemaking must be examined and evaluated.

(5)

8. COMMENT: The Department states that only 0.06 acres of coastal wetlands will be lost by revising the coastal wetlands maps. However, subsequent building will ensure that the property can never go back to being protected wetlands. Wetlands continue to be endangered by building.

(41)

9. COMMENT: If the revisions to the coastal wetlands boundary are adopted, the adoption should include an explicit prohibition of development on the site, so that the area can be used for scientific study. (17)

RESPONSE TO COMMENTS 5 THROUGH 9: The revisions to Coastal Wetlands Maps 252-2112 and 259-2112 do not authorize development of the site. Rather, the revisions to the coastal wetlands maps modify the coastal wetlands boundaries to reflect the current physical conditions of the site. The Act does not authorize the Department to prohibit or regulate coastal wetlands development of an area that does not meet the statute's definition of coastal wetlands, but any development of the site would be subject to all applicable Federal, State, and local laws and regulations. The Department notes that the 0.06 acres of coastal wetlands referred to in Comment 9 represents the net change in the area mapped as coastal wetlands on Coastal Wetlands Maps 252-2112 and 259-2112. In the adopted map revisions, 0.37 net acres formerly mapped as coastal wetlands are reclassified as uplands. The adopted map revisions represent the Department's initial investigations as described in the notice of proposal Summary at 47 N.J.R.

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683-686 and a subsequent investigation, as explained in the notice of substantial changes upon adoption published April 4, 2016.

As explained at 47 N.J.R. 683-684, based on several site inspections, the Department has determined that overwash from Superstorm Sandy resulted in the loss of a portion of the area previously mapped as coastal wetlands as these areas no longer meet the definition of a coastal wetland as set forth in the Wetlands Act of 1970 (N.J.S.A. 13:9A-2). Specifically, the sand deposited by Superstorm Sandy increased the elevation of a portion of the site above local extreme high water and altered the hydrology, which will prevent the re-establishment and growth of the coastal wetlands plant species identified in the Act. Further, the Department has determined that the depth of material deposited (2.3 to 5.4 feet) is significant enough to preclude the possibility of the land reverting to wetlands.

The Legislature recognized the importance of wetlands through the enactment of the Wetlands Act of 1970 and the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. These laws, as well as the Department's rules implementing these statutes, are intended to protect these important areas. As explained in the notice of proposal's Environmental Impact statement at 47 N.J.R. 685, the Department considers coastal wetlands to be one of the most environmentally valuable land areas within the coastal zone. Coastal wetlands provide various functions including: primary food web for estuarine and marine ecosystems; breeding, nesting, feeding, and foraging habitat for turtles, waterfowl, small mammals, finfish, and shellfish; storm surge protection; flood water and sediment storage; pollution filtration; and a buffer to human activities. However, as explained above, a portion of the coastal wetlands previously mapped as coastal wetlands on Coastal Wetlands Maps 252-2112 and 259-2112 no longer meets the

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definition of a coastal wetland under the Act. Accordingly, the amendments to the upper wetlands boundary adopted at this time do not result in any reduction in protection of coastal wetlands; instead, they ensure that areas appropriately classified as coastal wetlands are protected.

The Department's land use rules do consider flooding associated with future storm events, as well as the frequency and severity of storms. The Department amended the Flood Hazard Area Control Act Rules (45 N.J.R. 360(a); 1104(a)) and the CZM rules (45 N.J.R. 1141(a); 1696(a)), in 2013 to ensure that construction conforms to the Federal Emergency Management Agency's (FEMA) most current mapped flood elevations. These rule changes help ensure that development is undertaken in a manner consistent with the latest scientific standards as applied by FEMA.

The Department acknowledges that the owners of the petitioners' property, as well as owners of neighboring properties where wetlands formerly regulated as freshwater wetlands will be mapped as coastal wetlands, may experience a positive economic impact. The value of any impact to taxpayers and the owners of the respective properties is dependent upon the intended and allowed use of the properties. With respect to the impacts to taxpayers, as stated in the Economic Impact statement at 47 N.J.R. 685, the Department does not anticipate any negative economic impact as a result of the rule. The Department is not granting any permits through this adoption. The Department acknowledges the change in wetland status may make some additional development of these properties possible; however, any development would still be required to comply with the CZM Rules and all other applicable State, Federal, and local laws and regulations. Impacts of proposed development would be fully reviewed in that context.

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10. COMMENT: CAFRA was written by developers and the owners of the site who want to develop the property. The request for rule change by the developers and property owners to change the maps is an extreme conflict of interest. (16)

RESPONSE: The Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., was enacted by the New Jersey Legislature and signed into law in 1973. CAFRA authorizes the Department to regulate a wide variety of residential, commercial, public, or industrial development, such as construction, relocation, and enlargement of buildings and structures; and associated work, such as excavation, grading, site preparation, and the installation of shore protection structures within the CAFRA area. CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law, N.J.S.A. 12:5-3, are all implemented through the Coastal Zone Management Rules, N.J.A.C. 7:7.

Through this rulemaking, the Department is adopting changes to the coastal wetlands boundary that was promulgated on Coastal Wetlands Maps 252-2112 and 259-2112 under the Wetlands Act of 1970. While this rulemaking was initiated in response to a petition for rulemaking filed by the owners and a potential purchaser of specific parcels impacted by these two coastal wetlands maps, pursuant to a petition process specifically authorized by the Administrative Procedure Act at N.J.S.A. 52:14B-4(f), the petitioners did not write the notice of proposal. Instead, the notice of proposal and subsequent notice of proposed substantial changes upon adoption were drafted by the Department based upon its independent analysis of current conditions in the area as compared to the statutory definition of what constitutes a coastal wetland under the Wetlands Act of 1970. Indeed, as indicated in the notice of proposal

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Summary at 47 N.J.R. 683-684, while the petitioners' requested that the Department amend the two coastal wetlands maps to exclude an approximate 2.2 acre portion of the petitioners' property, the Department found that it was appropriate to remove a smaller area of approximately 1.15 acres from the mapped coastal wetland area on the petitioners' property while an additional 1.09 acres (0.33 acres of which were on petitioners' property) not previously designated as coastal wetlands would be reclassified as such.

As the petitioners did not draft CAFRA, the Wetlands Act of 1970, or the notice of proposal, there is no conflict of interest.

11. COMMENT: Development in overwash areas is prohibited under the CZM Rules. The Holgate site is considered an overwash area and, therefore, development of the site is prohibited. Remapping of the wetlands on the site does not affect its classification as an overwash area. (4, 17, and 24)

12. COMMENT: It is likely that another Superstorm Sandy will occur in the future and any new development on this site will be damaged, adding to further degradation of the area. Areas of overwash, such as the one subject to this notice of proposal, should not be developed due to their hazardous nature. (3, 17, 24, 28, and 29)

RESPONSE TO COMMENTS 11 AND 12: As explained in Response to Comments 5 through 9, the revisions to the coastal wetlands maps reflect the current conditions of the site. While the revisions to the coastal wetlands maps result in the reclassification of a portion of the site from wetlands to uplands, the revisions do not preclude the area from being considered an overwash area as described in the CZM Rules at N.J.A.C. 7:7-9.17.

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Under the CZM Rules, overwash areas are considered a special area. Special areas are areas that the Department has determined are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements, as to merit focused attention and special management rules. The CZM Rules' overwash area rule sets forth development standards in this special area. In general, development is prohibited in overwash areas, except for development that has no prudent or feasible alternative in an area other than an overwash area. A development may be permitted if, by creating a dune with a buffer zone or expanding an existing dune landward, the classification of the site is changed, so as to significantly diminish the possibility of future overwash. If a coastal permit is required for a development on the petitioners' site, demonstration of compliance with all applicable rules would be required.

Also, as noted in the Response to Comments 5 through 9 above, amendments made in 2013 to the Flood Hazard Area Control Act Rules and the CZM help ensure that development is undertaken in a manner consistent with the latest scientific standards as applied by FEMA.

13. COMMENT: The Department should be protecting this valuable wetlands system now and in the future as conditions continue to change on the site. The proposed map revisions do not consider that coastal wetlands are dynamic and will change as a result of storms and sea level rise. The upland areas created by the overwash from Superstorm Sandy are temporary and susceptible to manipulation from future storm events. This area is not stable enough to build safely. The Department is acting too quickly in revising the wetlands boundary. Three commenters indicated that since Superstorm Sandy, they have observed changes in the site and

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the wetlands on site. If left untouched, the site will naturally revert back to wetlands over time.

Research and monitoring of the site is needed to determine whether the wetlands are recovering prior to revising the wetlands boundary and allowing development of the site. (2, 3, 7, 9, 12, 13, 14, 16, 17, 24, 25, 29, 30, 31, 32, 33, 34, 37, 39, 41, 42, 45, and 48)

14. COMMENT: The unstable and shifting nature of overwash areas is so apparent that wetlands affected by overwash sand, specifically due to Superstorm Sandy, are the focus of the ongoing research of the United States Geologic Survey (USGS) (Hurricane Sandy Response- Barrier Island and Estuarine Wetland Physical Change Assessment) to understand the potential vulnerability to future storms and inform decisions about recovery and rebuilding. Without more research like this, an incorrect reclassification could impact natural processes of wetlands restoration. (17 and 24)

RESPONSE TO COMMENTS 13 AND 14: As explained in the Response to Comments 5 through 9, based on several site inspections, the Department has determined that overwash from Superstorm Sandy resulted in the loss of a portion of the property's coastal wetlands as these areas no longer meet the definition of coastal wetlands set forth in the Act. See the notice of proposal Summary at 47 N.J.R. 684 for a detailed explanation of the methods employed by the Department in delineating the extent of wetlands on the site.

The Department is aware of the ongoing research of the USGS and looks forward to the publication of the results to increase understanding of the large-scale impact of Superstorm Sandy on coastal wetlands along the East Coast. Since 2014, Department staff have conducted five site inspections and observed no change in vegetation, elevation, or hydrology over the time period of the inspections. While the results of the USGS research may have implications for

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assessing future coastal vulnerability, the Department has determined that the depth of the sand across the overwash (ranging from 2.3 to 5.4 feet) is such that it will preclude the reestablishment of wetlands. This position is supported by several studies, as described below.

Courtemanche, Hester, and Mendelsohn (1999) found that coastal wetland areas of a Louisiana barrier island with greater than 50 cm (19.7 in) of sediment deposited during Hurricane Andrew overwash events were not recolonized by coastal wetlands species in the three years following the storm event. Rather, the vegetation observed growing in these areas were upland species commonly found on dunes and other coastal upland areas. (Courtemanche, R. P. Jr., Hester, M. W., & Mendelsohn, I. A. (1999). Recovery of a Louisiana Barrier Island Marsh Plant Community following Extensive Hurricane-Induced Overwash. Journal of Coastal Research, 15(4), 872–883.) Guntenspergen, et al. (1995) similarly found that Louisiana coastal marshes with 16 – 150 cm (6.3 to 59.1 inches) of sediment deposition as a result of overwash experienced a shift in plant communities from obligate wetlands species to “semi-terrestrial” species. They concluded that the deposition increased the elevation of the area and isolated the area from surface waters, resulting in drier conditions that could not support plant species that require wetlands hydrology to grow and thrive. (Guntenspergen, G.R.; Cahoon, D.R.; Grace, J.; Steyer, G.D.; Fournet, S.; Townson, M.A., and Foote, A.L., 1995. Disturbance and recovery of the Louisiana coastal marsh landscape from the impacts of Hurricane Andrew. Journal of Coastal Research, Special Issue No. 21, Impacts of Hurricane Andrew on the Coastal Zones of Florida and Louisiana: 22-26 August 1992 (SPRING 1995), 324-339).

Deposited sediment on the petitioners’ property measured from 2.3 to 5.4 feet, which, given the observed results of much smaller sediment deposits present in the areas subject to the

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studies above, precludes the possibility of the area changing, so as to meet the Wetlands Act of 1970 definition. Therefore, based on the Department's observations through site inspections and the depth of material in the overwash area, the Department has determined that the overwash area will not naturally change, so as to meet the definition of a coastal wetland and thus additional research and monitoring of the site is not necessary.

With reference to the safety of structures potentially constructed in the area no longer meeting the statutory definition of coastal wetlands, the mapping amendments adopted at this time do not authorize development of any portion of the area affected; if any development is subsequently proposed, it would be required to comply with any applicable Department rules, as well as State and local building code requirements. Further, as explained in the Response to Comments 5 through 9, amendments made in 2013 to the Flood Hazard Area Control Act Rules and the CZM help ensure that development is undertaken in a manner consistent with the latest scientific standards as applied by FEMA.

15. COMMENT: The secondary impacts associated with the remapping of the site are more important than the economic gains of the developer and property owners. Specifically, the Department must consider the impact of the reclassification of freshwater wetlands as coastal wetlands and the loss of the associated transition area buffer. (24)

RESPONSE: The adopted changes to Coastal Wetlands Maps 252-2112 and 259-2112 will result in an area previously regulated as freshwater wetlands now being regulated as coastal wetlands. This reclassification of the wetlands recognizes the fact that the area meets the definition of coastal wetlands under the Act, and, thus, must be depicted as such on the promulgated coastal

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wetlands maps. As indicated in the notice of proposal Summary at 47 N.J.R. 684 and in the Economic Impact statement, the Department did acknowledge that an area previously under the jurisdiction of the Freshwater Wetlands Protection Act and implementing rules will now be mapped as coastal wetlands, which will result in the transition area requirements that are applicable to freshwater wetlands no longer applying. The Department cannot continue to classify an area as freshwater wetlands when site conditions demonstrate that the area meets the definition of coastal wetlands in the Wetlands Act of 1970. The Department does not anticipate a significant environmental impact because the wetlands on the property will continue to provide the functions of a wetland.

16. COMMENT: Despite the overwash of sand from Superstorm Sandy, the underlying land remains wetlands. This position is supported by Dr. Stewart Farrell, Director, Stockton University Coastal Research Center. (7 and 48)

RESPONSE: The commenter did not supply any statement or information from Dr. Farrell. However, the Wetlands Act of 1970, at N.J.S.A. 13:9A-2, defines a coastal wetland as “any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey ... 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, some, but not necessarily all,” of the coastal wetlands plant species subsequently listed. As explained in the notice of proposal at 47 N.J.R. 684, the Department conducted a site investigation on September 9, 2014, on a full moon event when tides are at their highest in order to ascertain which areas on the petitioners’ property exhibited the hydrologic conditions necessary for the growth of coastal wetlands species. Areas

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with standing water within 12 inches of the surface are assumed to be capable of supporting the root systems of coastal wetlands plants. The area was denuded of vegetation throughout the Department's investigations, which led Department staff to use hydrology to identify which areas of the property were capable of supporting coastal wetlands vegetation. Areas that were previously low-lying, subject to tidal action, and capable of growing coastal wetlands species are now at an elevation that prevents tidal flow and subsequent growth of these species. These areas no longer meet the definition of "coastal wetland" as defined in the Act. The Department's determination is further supported by the results of the research conducted by Courtemanche, Hester, and Mendelssohn (See the Response to Comments 14 and 15 above).

17. COMMENT: A large amount of sand on the petitioners' property was deposited during Superstorm Sandy by water pushing sand from the ocean dunes across the street, the rest was intentionally or unintentionally placed there. Additional sand was dumped into the wetlands by cleanup crews in the aftermath of the storm. The overwash area is not just the result of nature; it is also manmade and grew in the weeks after Superstorm Sandy. (12, 23, and 35)

RESPONSE: On April 23, 2014, a New Jersey Geological and Water Survey geologist sampled the sand and determined that the depositional characteristics indicate the material was deposited from Superstorm Sandy overwash events. This sampling, combined with review of aerial imagery taken before Superstorm Sandy, allowed the Department to conclude that the sand was deposited during the storm through a rush of water over the ocean beach and dune system. The soil sample did not indicate that there had been manual placement of sand after the storm event.

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In addition, there were multiple complaints after Superstorm Sandy concerning filling and excavation of the area in question. All complaints were investigated by the Department's Bureau of Coastal and Land Use Enforcement who determined that no violation of any applicable rule or statute occurred on this site.

#### Rulemaking Sets a Dangerous Precedent

18. COMMENT: Reclassifying the wetlands in Holgate will open the land to potential development and set a dangerous precedent for the entire coastline. Undeveloped lands are rare treasures that are essential to preserve the natural environment and maintain wildlife and plants for future generations to enjoy. The immediate impacts brought about by this action create bad policy, which continues to promote overdevelopment of not only environmentally valuable areas, but also areas known to be subject to flooding and future storm damage. Accordingly, this notice of proposal is opposed and should not be adopted. (17, 19, 24, 51, and 52)

RESPONSE: As explained in the notice of proposal summary at 47 N.J.R. 683-684, this rulemaking is in response to a petition for rulemaking to revise the boundaries of mapped coastal wetlands in Holgate. For the reasons explained in the Response to Comment 17, after several site inspections and other analysis, the Department determined that a portion of the area previously identified as coastal wetlands on Coastal Wetlands Maps 252-2112 and 259-2112 no longer meets the definition of coastal wetlands set forth in the Act. The Department additionally determined that areas not currently mapped as coastal wetlands should be classified as such. Accordingly, the Department has revised the coastal wetlands boundary on Coastal Wetlands Maps 252-2112 and 259-2112, both adding and removing areas mapped as coastal wetlands, to

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accurately depict the extent of coastal wetlands in this area. The Department agrees that protection of environmentally valuable areas and areas subject to flooding is important. The current action ensures that resources are appropriately classified and therefore receive proper protection. The mapping of coastal wetlands in accordance with the statutory standard does not authorize development; any potential development would need to meet any applicable Federal, State, and local requirements.

19. COMMENT: The wetlands on the Holgate property are important to wildlife and adjacent properties. The wetlands on the petitioners' property have been enjoyed for their natural beauty and wildlife for generations and are one of the few areas of open space left on Long Beach Island. Two of North America's migratory bird flyways pass over the Pacific and Atlantic coasts, where coastal wetlands provide temporary habitat to waterfowl and shorebirds. The CZM Rules protect endangered or threatened wildlife or plant species habitat and include a buffer area based on the home range and habitat requirements of the particular species.

Regardless of whether a portion of the wetlands on the property are currently covered by sand, the area should be left as open space as it provides habitat for a variety of migratory wildlife, turtles, and butterflies. (4, 6, 7, 12, 20, 21, 25, 28, 29, 32, 33, 36, and 45-49)

20. COMMENT: Hurricane Irene and Superstorm Sandy have taught us valuable lessons. Coastal wetlands, such as those on the petitioners' property, are needed along the coast to "buffer" or protect existing coastal development from coastal storms, prevent flooding, and absorb pollutants. The wetlands on the petitioners' property saved neighboring homes from serious damage during Superstorm Sandy. Development on the petitioners' property will

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negatively impact wildlife, the adjacent wetlands, and neighboring properties and, therefore, the rulemaking to reclassify the wetlands as uplands is opposed. (1, 5, 7, 12, 13, 20, 21, 30- 32, and 45-49)

21. COMMENT: The Southern United States experienced damage during Hurricane Katrina because they built into the coastal wetlands. Now, in New Jersey, it seems this rulemaking will promote development. Coastal wetlands are not immune to erosion and impacts from sea level rise and storms as a consequence of climate change and shoreline armoring. Wetlands typically shield the coastline from erosion and flooding and protect people and property, but if sea level increases and development prevents inland migration of wetlands, more wetlands will be converted to open water. (25)

RESPONSE TO COMMENTS 19 THROUGH 21: The Department recognizes the importance of coastal wetlands to natural and built communities. As explained in the Environmental Impact statement of the original notice of proposal at 47 N.J.R. 685, the Department considers coastal wetlands to be one of the most environmentally valuable land areas within the coastal zone. Recognition of the environmental value of coastal wetlands led to the passing of the Act. The Department continues to foster the goals of the Act by regulating activities within mapped coastal wetlands. Superstorm Sandy, a natural event, modified the conditions of the properties affected by this mapping change, such that a portion of the area previously mapped as coastal wetlands no longer meets the definition of coastal wetlands as set forth in the Act. The revisions to the coastal wetlands boundary reflect the current conditions and ensure that areas appropriately classified as coastal wetlands are protected.

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The Department is committed to protecting wildlife and plant species from negative impacts of development. Pursuant to N.J.A.C. 7:7-9.36 (the special area rule for endangered or threatened wildlife or plant species habitats), “development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated, through an endangered or threatened wildlife or plant species impact assessment ... that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.” This rule also establishes a buffer area surrounding endangered or threatened wildlife habitat.

Additionally, the CZM rules protect critical wildlife habitat, which includes nesting habitat. Development proposed in such areas is generally prohibited and is reviewed on a case-by-case basis. For more information, see N.J.A.C. 7:7A-9.37.

The amendments to Coastal Wetlands Maps 252-2112 and 259-2112 do not authorize development. Should a permit application for regulated activities on the site be submitted to the Department in the future, proposed development would be required to meet the CZM Rules, including the rules on threatened and endangered species habitat and critical wildlife habitat cited above, and address the impacts of the proposed development on the remaining wetlands, wildlife, and surrounding development.

The Department agrees that natural events, such as Superstorm Sandy, have severely impacted New Jersey’s tidal wetlands and that significant amounts of tidal wetlands have been lost. To address this loss, rather than armoring the shoreline with hard structures, such as bulkheads or revetments, the State is looking to a natural solution through the establishment of living shorelines, as an alternative that adds diversity to other shore protection measures. Living

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shorelines are a shoreline management practice that addresses the loss of vegetated shorelines and habitat in the littoral zone by providing for the protection, restoration, or enhancement of these habitats. This is accomplished through the strategic placement of vegetation, sand, or other structural and organic materials. The CZM Rules were revised in 2013 to facilitate the establishment of living shorelines in New Jersey. By encouraging living shorelines, the Department is both protecting citizens from storm events and flooding, while enhancing ecological systems by creating more wetlands and shallow habitat. For additional information concerning the Department's living shoreline program see [www.nj.gov/dep/lum/lup.htm](http://www.nj.gov/dep/lum/lup.htm).

22. COMMENT: The wetlands should be cleared of sand and reestablished to maintain classification as wetlands. This would preserve the wildlife and provide flood protection. (23, 34, and 35)

23. COMMENT: The wetlands on the petitioners' property have a history of alterations and natural changes. Pictures from the 1970s show bulldozer tracks on the property from a subdivision to the north; it is unknown if the original grade on the parcel was maintained. A storm in March of 1962 resulted in a breach in the area. The area experienced vegetative succession, from grasses to scrub pines, and experienced routine helicopter landings and tidal flooding. Hurricane Gloria resulted in another breach and pushed a high-water trash line into an adjacent property at a height one to two feet above the level of sediment deposition currently in the wetland.

Coastal wetlands are worth protecting, even if they have been stressed and experienced catastrophic changes over the years. The resilience of the wetland needs to be preserved,

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remediated after negligence, and preserved for future generations. Although the current condition of the wetlands is in part a result of a history of unnatural alterations, the ecosystem should be allowed to naturally attenuate to a disturbed but still protected ecosystem, such as a patchwork of tidal and scrub ground, that may revert to a coastal wetland naturally over time.

(20)

RESPONSE TO COMMENTS 22 AND 23: The deposition of sand onto the petitioners' and adjacent properties was the result of natural overwash during Superstorm Sandy, as confirmed by Department staff and a soil analysis by a New Jersey Geological and Water Survey geologist. The area of overwash is located on privately owned property. The decision of what activities to perform or to leave the area no longer classified as coastal wetlands unaltered lies with the owners of the property. However, any proposed development of any area no longer classified as coastal wetlands must comply with all Federal, State, and local requirements.

The Department agrees that coastal wetlands should be protected. The Coastal Zone Management Rules limit activities within wetlands (N.J.A.C. 7:7-9.27). The area formerly mapped as coastal wetlands on the petitioners' property no longer meets the definition of coastal wetlands and the overwash area is not providing the functions associated with coastal wetlands.

Regardless of historic alterations (both natural and man-made), the origin of the deposited sand currently on the property was determined to be the result of overwash from Superstorm Sandy. As stated in the notice of proposal, a New Jersey Geological and Water Survey geologist sampled the sand on the petitioners' property on April 23, 2014, and determined that the depositional characteristics indicate the material was deposited naturally from Superstorm Sandy overwash events. The depth of the sand ranges from 2.3 feet to 5.4 feet,

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which the Department has determined will preclude the possibility of the area naturally reverting back to a coastal wetland. The remapping of this area does not necessarily preclude the protection of the area; it only revises the applicable coastal wetlands maps to accurately reflect current conditions and ensures that all areas appropriately classified as coastal wetlands under the Act receive protection.

24. COMMENT: The investigations performed by the Department to determine the status of the coastal wetlands on the petitioners' property are inadequate. Specifically, the vegetation study conducted by the Department was performed in February (during the winter), and the study of the approximation of spring high tide was conducted in the fall. (45)

RESPONSE: The Department's investigation of the area began with a review of aerial imagery and several field visits to assess past and current conditions of the petitioners' property. Site inspections occurred in March, April, September, and December 2014. The vegetation in the area has characteristics that are identifiable throughout the year. Department staff continued to observe vegetation with identifiable characteristics each time they investigated the site. In portions of the site denuded of vegetation, Department staff determined if the areas were capable of growing coastal wetlands plant species. Areas that typically exhibit free standing water within 12 inches of the surface are assumed to be capable of supporting hydrophytic coastal wetlands species. As indicated in the notice of proposal Summary and in response to other comments above, borings taken on site demonstrated that there was no free standing water within 12 inches of the surface. The depth of the sand deposited by Superstorm Sandy in the overwash area ranges from 2.3 feet to 5.4 feet.

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Vegetation is only one component of the definition of coastal wetlands pursuant to the Act. Coastal wetlands must also be subject to tidal action and have an elevation at or below one foot above local extreme high water. As explained in the Response to Comment 25 below, spring tides, in which tidal ranges are larger, occur twice monthly, regardless of season. Therefore, it is appropriate for the Department to use the September observation of spring high tides to assess local extreme high water.

25. COMMENT: Assigning extreme high water spring as the equivalent to local extreme high water is concerning, especially since the Department's investigation occurred in September. The survey that the Department conducted during high tide in September is not representative of the high-water mark in the area. Several photographs have been submitted on at least five occasions showing the water going right up to the sand and over the sand in the area. (24 and 45)

RESPONSE: As explained at 47 N.J.R. 684, the definition of coastal wetlands under the Wetlands Act of 1970, specifically, references areas whose surface is at or below an elevation of one foot above local extreme high water. The term "local extreme high water" is not defined by the Act. In applying the Act, the Department equates "local extreme high water" to "extreme high water spring," which is the highest excursion of the spring tides. The term "spring high tide" refers to high tides that occur twice in each lunar month during new moon and full moon events. Spring tides, in which tidal ranges are larger (higher high tides and lower low tides), occur twice monthly, regardless of season. In an effort to observe a close equivalent of local extreme high water conditions, Department staff conducted a site investigation on September 9, 2014, on a full moon event during which tides are at their highest. The event provided the

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Department the opportunity to ascertain which areas exhibited hydrologic conditions necessary for the growth of coastal wetlands species. The Department utilized the petitioners' proposed wetlands boundary as a benchmark and modified the location of the wetlands boundary based on observed hydrologic conditions.

While the petitioners' property may experience infrequent flood events, the presence of water or occasional inundation does not mean the area meets the definition of a coastal wetland. If the water does not persist and cover the area with enough frequency to support the growth of coastal wetlands species, the area cannot be considered a coastal wetland. Soil borings taken by the Department in the overwash area showed no water within 12 inches of the surface, indicating the absence of wetland hydrology under the Act.

26. COMMENT: A Department spokesman stated that there is nothing scientifically that would make a portion of the property constitute a wetland anymore, so the maps must change. Though the spokesman stated that the Department would still have to approve any building applications, it is troubling to note that the declassification of the wetlands would be the precursor to development and building. That statement is all the more disturbing since it contradicts the statement of a different spokesman, made in July 2013, that the overwash does not alter the fact that the affected wetlands are not buildable. (48)

RESPONSE: While the commenter did not provide complete information as to either of the two statements made by Department spokesmen, the Department believes that the commenter is referring first to a February 4, 2015, article in which the Department spokesman is quoted as saying "[t]here's nothing scientifically that would make that constitute a wetlands anymore, so

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scientifically we need to make that change.” (NJ Spotlight, February 4, 2015,

<http://www.njspotlight.com/stories/15/02/03/holgate-wetlands-development-plans-raise-concerns-among-residents-environmentalists/>) The Department believes that the commenter is

next referring to a July 17, 2013, article that states, “officials at the state Department of Environmental Protection, which has final say over any development plans, said the property isn’t buildable. DEP spokesman ... said overwash from Sandy doesn’t change that.” (NJ.com, July 17, 2013,

[http://www.nj.com/news/index.ssf/2013/07/possible\\_wetlands\\_development\\_in\\_holgate\\_has\\_neighbors\\_angered.html#comments](http://www.nj.com/news/index.ssf/2013/07/possible_wetlands_development_in_holgate_has_neighbors_angered.html#comments)).

These two statements are not in contradiction. The February 2015, article is in reference to the notice of action on petition for rulemaking, published on November 3, 2014 (46 N.J.R. 2199), and focuses on the portion of the property subject to the petitioner’s request for amendment of the coastal wetlands maps. At the time of the article, the Department had undertaken its extensive analysis to determine that the coastal wetlands maps would be proposed to be amended, so that the maps accurately depict the areas that meet the statutory definition of coastal wetlands. The July 2013, article attributes a statement to a Department spokesman on the issue of what the article describes as “a potential 24-acre development project.” The article predates the petition for rulemaking and the analysis the Department undertook before it proposed to modify the relevant coastal wetlands maps. Coastal wetlands are protected from most development under the Act and the CZM rules; thus, as a general characterization of the status of the property at the time, the statements the article attributes to the Department were appropriate.

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The amendments to Coastal Wetlands Maps 252-2112 and 259-2112 adopted herein do not authorize development. While some of the area previously mapped as coastal wetlands is no longer classified as wetlands, and as such is no longer subject to the requirements of the Wetlands Act of 1970 and implementing CZM Rules, any development proposed on the property is subject to all applicable Federal, State, and local requirements.

27. COMMENT: The State, Coastal Commission, and town have not done enough to ensure the Act is upheld. (43)

RESPONSE: The Wetlands Act of 1970 authorizes the Department to, “for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal wetlands.” The Coastal Zone Management Rules are the Department’s fulfillment of this responsibility.

The coastal wetlands maps are promulgated by rule, as required by the Wetlands Act of 1970. These maps are promulgated to show the boundaries of coastal wetlands that meet the specific definition of coastal wetlands set forth in the Act. The proposed revision of Coastal Wetlands Maps 252-2112 and 259-2112 is necessary to comply with the requirements of the Wetlands Act of 1970, which requires specific elevation and vegetation criteria to be met for an area to be within the coastal wetlands boundaries on the promulgated maps.

28. COMMENT: Based on the Department’s own assertion and findings of the functions provided by coastal wetlands, these lands were clearly acting as a working, valuable natural

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system. They specifically functioned for storm surge protection, flood water and sediment storage, pollution filtration, and a buffer from human activities during Superstorm Sandy. This rulemaking seeks to change the mapping based on the very benefits these undeveloped wetlands actually provided (the reason they are protected under the Act). The intent of the Act was not for the State to penalize nature by amending wetlands maps for wetlands behaving, providing services, and functioning in the exact way they should.

The process for determining what designates a wetland should be looked at with the intention to protect these areas to allow them to provide benefits (that is, sediment storage) through changing conditions. A natural storm event, such as Superstorm Sandy, should not bring about the ability to change wetlands maps as this action does not reflect the protective purposes of the Act. (17 and 24)

RESPONSE: The amendments to the applicable coastal wetlands maps utilize sound science to update the maps to reflect current conditions of the area. The Wetlands Act of 1970 authorizes the Department to “make an inventory of all tidal wetlands within the State” and “adopt, amend, modify or repeal orders regulating, restricting, or prohibiting dredging, filling, removing, or otherwise altering, or polluting, coastal wetlands.” As indicated in previous responses, the Act also specifically defines the characteristics that must be present for an area to be considered a coastal wetland. Regardless of their past functionality, the areas previously included within the coastal wetlands area on Coastal Wetlands Maps 252-2112 and 259-2112 that are no longer classified as coastal wetlands no longer meet the definition of coastal wetlands set forth in the Act.

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The Department proposed revisions to the coastal wetlands maps precisely to address changing conditions. The amendments reclassify some areas previously mapped as coastal wetlands to areas not mapped as coastal wetlands and reclassify other areas not mapped as coastal wetlands to mapped coastal wetlands. The Department, through its investigations, has deemed it appropriate to make these revisions to the maps as the conditions in the area in question are not likely to change in the future. See the Response to Comments 5 through 9 for more information on the Department's investigations and findings and the Response to Comments 13 and 14 for a discussion on supporting scientific literature.

#### Defer to Environmental Organizations

29. COMMENT: The Department should defer its decision on the fate of the coastal wetlands on this property to organizations such as the Alliance for a Living Ocean or Sierra Club since their interest in the property is not founded in financial gain. Their experience and local knowledge is valuable. (1 and 41)

RESPONSE: The Department values the experience and knowledge of various constituencies, including environmental groups, on rulemakings and policy development. However, this rulemaking focuses on whether an area is coastal wetlands as defined under the Act, and if so, the extent of the coastal wetlands. The Department has determined based on several site inspections that a portion of the area previously mapped as coastal wetlands no longer meets the definition of coastal wetlands under the Act. Accordingly, the Department has revised Coastal Wetlands Maps 252-2112 and 259-2112 to reflect the extent of coastal wetlands on the property.

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Department Should Purchase and Preserve Petitioners' Property

30. COMMENT: The Department should purchase, preserve, and protect the wetlands on the petitioners' property for the benefit of current and future generations. (46, 47, and 49)

RESPONSE: The Department is actively involved in purchasing property to preserve as open space through the Green Acres and Blue Acres programs (see

<http://www.nj.gov/dep/greenacres/>). However, not every property can be purchased by the Department due to the constraints of limited resources. While the Department is aware of independent charitable conservancies that may be interested in acquiring the petitioners' property, the acquisition or non-acquisition of any property does not impact the Department's analysis of whether an area qualifies as coastal wetlands under the Wetlands Act of 1970.

**Comments Received During the Comment Period on the Notice of Substantial Changes on Adoption**

During the 60-day comment period on the notice of substantial changes on adoption proposing only to amend the coastal wetlands boundary on Block 1.61, Lot 1, the Department received written and/or oral comments from the following commenters. The comments received were beyond the scope of the amendments proposed in the notice of substantial changes on adoption because the issues presented were raised by these and other commenters filing comments during the comment period on the initial notice of proposal, which are responded to above.

1. Michelle Conover

2. Susan Dickey

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3. Timothy Feeney
4. Toni Granato, Sierra Club
5. Kyle Gronostajski, Alliance for a Living Ocean
6. Richard Grosser
7. Helen Henderson, American Littoral Society
8. Dorothy Jedziniak
9. Ted Jedziniak
10. Carol Jelich
11. Betty Jelich
12. David R. Jones
13. Karen Martinez
14. Margit Meissner-Jackson, Sierra Club
15. Tracey Murphy-Metee
16. Louise Neal
17. Rand Pearsall
18. David Price
19. Frank Pulini
20. Douglas Schearer
21. Nancy Vorbach

**Federal Standards Statement**

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Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995 c. 65), require State agencies which adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Federal Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq., (Federal CZMA) does not set specific regulatory standards or requirements for development in the coastal zone; rather, it provides broad guidelines for states developing coastal management programs. The general requirements for what a state coastal management program must include are found at 15 CFR Part 923. The requirements do not specifically address the mapping of coastal wetlands and the standards which apply to the protection or development of this coastal resource. The guidelines simply provide a planning and management process, without establishing development standards for development in the coastal area. Therefore, the adopted revisions to Coastal Wetlands Maps 252-2112 and 259-2112 do not exceed any Federal standards or requirements of the Federal CZMA.

**Full text** of adopted 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) was recodified as N.J.A.C. 7:7 Appendix D; see 47 N.J.R. 1392(a)):

APPENDIX D  
COASTAL WETLANDS MAPS  
(Incorporated by reference at N.J.A.C. 7:7-2.3(c))

1. – 2. (No change.)

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3. Ocean County:

(No change from proposal.)

4. – 11. (No change.)