

THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JUNE 16, 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 refer the petition for rulemaking 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) for further deliberation.

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

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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.

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).

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

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 Department is in the process of determining whether the approximately 2.2 acres portion of the above referenced property meets the definition of a coastal wetland in the Wetlands Act of 1970 at N.J.S.A. 13:9A-2, including analyzing information obtained during visits to the site. Accordingly, the Department is referring the matter for further deliberation in order to provide time for this analysis to be completed.

A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-4.2. In accordance with N.J.A.C. 7:1D-1.1, the Department will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.