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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. 7:7-2.3
Request for revise Coastal Wetlands Maps 224-1752, 224-1758, 231-1752, 231-1758 and 238-1752 to remove property located in Lower Alloways Creek Township, Salem County
Petitioner: PSEG Power LLC

Take notice that on November 9, 2020, the Department of Environmental Protection (Department) received a petition for rulemaking from PSEG Power LLC (petitioner).

Petitioner indicates that it is the current owner of parcels designated on the tax map of Lower Alloways Creek Township, Salem County, as Block 26, Lots 4, 4.01, 5 and 5.01, and is in the process of taking ownership from the United States Army Corps of Engineers (“the Army Corps”) of additional property located within Lower Alloways Creek Township designated as Block 26, Lot 2 (collectively, the Property). The Property includes an area within which the petitioner is participating in the development of the New Jersey Wind Port. Petitioner requests that Coastal Wetland Maps 224-1752, 224-1758, 231-1752, 231-1758, and 238-1752, that are listed in N.J.A.C. 7:7-2.3(a), be amended to exclude approximately 150 acres of previously developed portions of the Property that it asserts do not meet the definition of coastal wetlands as described further below.

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Petitioner initially cites to the definition of “coastal wetlands” contained in the Wetlands Act of 1970 at N.J.S.A. 13:9A-2, which provides that, for the purposes of that act, coastal wetlands are “any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware bay and river, Raritan bay, Barnegat bay, Sandy Hook bay, Shrewsbury river including Navesink river, Shark river, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formally connected to tidal waters whose surface is at or below an elevation of 1 foot above local extreme high water and upon which may grow or is capable of growing some, but not necessarily all, of [listed species].”

Petitioner asserts that the existing delineation of the coastal wetland boundary on maps 224-1752, 224-1758, 231-1752, 231-1758, and 238-1752 does not reflect current conditions on the property in light of development previously authorized at the PSEG Nuclear Salem and Hope Creek Generating Station (Block 26, Lot 4, 40.1, 5 and 5.01), as well as historic development and continuous operation of the Army Corps’ Artificial Island Confined Disposal Facility (“CDF”) Cell No.3 (Block 26, Lot 2). Petitioner provided aerial photographs that it says document both the historic condition of the site and the previously authorized development in relation to the 1970 Coastal Wetland maps and 1977 revisions. Petitioner also provided a wetlands resource report,

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which concludes that the areas it seeks to have removed from the Coastal Wetlands maps do not meet the statutory definition of coastal wetlands for the following reasons:

- The areas consist of existing development in the form of existing structures, laydown areas, roadways, maintained landscaped buffer or operating dredge disposal facilities and would not be considered a bank, marsh, swamp, meadow or flat;
- The identified areas are sufficiently separated from direct connection to or influence of tidal waters;
- Minimum elevation of the identified areas average from 9 to 11 feet (NAVD 88) with maximum elevations as high as 23 feet (NAVD 88) which are significantly higher than the calculated local mean higher high tide elevation of 3.21 (NAVD 88); and
- Due to the disturbed nature of the area, lack of tidal exchange and higher elevation the capability of the areas to grow designated coastal wetland vegetation is limited.

Petitioner indicates that field investigations identified several small roadside swales and isolated topographic depressions which would be characterized as freshwater wetlands, but noted the lack of connection to regional tidal waters and domination by invasive *Phragmites australis* as opposed to common native coastal wetland species. Further, soil borings collected

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in these areas are also asserted to be reflective of the highly disturbed nature of the site and included common fill type material.

With reference to the existing USACE Artificial Island confined disposal facility cell No.3, petitioner states that this area consists of an approximately 100-acre area isolated by containment berms ranging from 12 to 23 feet (NAVD 88). While areas outside the containment berms are tidally influenced and contain a mix of the invasive *Phragmites australis* as well as native *Spartina alterniflora* and other common coastal wetland vegetation species, petitioner notes that historic construction of CDF Cell No.3 predates the development of the 1970 NJDEP coastal wetland maps by several decades and speculates that the area within the berms was likely incorrectly identified as coastal wetlands due to the difficulties in using aerial photographs to distinguish the area from adjacent tidal marshes when overgrown with invasive *Phragmites australis* in aerial photography. Petitioner states that routine maintenance and continuous operation as a CDF has resulted in an area that is quite distinct ecologically and functionally separate from adjacent marsh areas.

The Petitioner asserts that the requested modification would move the coastal wetland boundary east in several locations to consistently mirror the existing upper wetland boundary/upper wetland line (uwb/uwl) as provided by the Department's Office of Information

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Resource Management, Bureau of Geographic Information Systems and would exclude areas of existing development within the Salem and Hope Creek Generating Station and the operational USACE Artificial Island CDF Cell No.3.

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.