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*Via E-Mail (Gary.Brower@dep.nj.gov) and Regular Mail*

Gary Brower, Director  
Office of Legal Affairs  
New Jersey DEP  
401 E State St; Mail Code 401-04L  
PO Box 402  
Trenton, NJ 08625-0402

**RE: PETITION FOR RULEMAKING**  
Proposed Amendments to N.J.A.C. 7:7-12.5,  
N.J.A.C. 7:7-9.2 and N.J.A.C. 7:7-9.6  
Petitioners: Craig and Tracy Cinelli

Dear Mr. Brower:

This office represents Craig and Tracy Cinelli, owners of property located at 41 Pershing Boulevard, Block 961, Lot 19, fronting on Barnegat Bay in the Borough of Lavallette, Ocean County. This is a Petition for Rulemaking pursuant to the Administrative Procedure Act, seeking to modify the manner in which the Department of Environmental Protection regulates recreational docks and piers in areas mapped as shellfish and/or submerged aquatic vegetation habitat.

The Administrative Procedure Act, at N.J.S.A. 52:14B-4(f), provides in relevant part that any interested person may petition an agency to adopt a new rule, or amend or repeal an existing rule. The Department has adopted regulations implementing this provision at N.J.A.C. 7:1D-1.1 et seq. The following Petition has been prepared in accordance with the requirements of those rules.

## **SUMMARY OF PROPOSAL**

As explained below, the Coastal Zone Management Rules applicable to the design and construction of recreational docks and piers are interpreted and applied by Department Staff as requiring that docks and piers in areas to be located in areas mapped as shellfish and/or submerged vegetation habitat must extend to a location at which water depths are 4 feet or greater at mean low water. This requirement, while well intended (it is designed to avoid potential adverse impacts to marine resources associated with powerboats), precludes the construction of smaller, shorter docks that afford property owners water access for activities such as fishing, swimming, crabbing and the use of non-motorized small craft. This proposal is intended to remedy that problem.



As described herein, the Petitioners are asking that the Department modify the Coastal Zone Management Rules to allow the construction of shorter recreational docks and piers in shellfish and submerged vegetation habitat, provided that they will not be used for the mooring of powerboats.

The Petitioners believe that this proposal will not in any way undermine the Department's goal of minimizing adverse impacts to marine resources that might result from the operation of powerboats in shallow water. While there may be a concern that a permit condition that prohibits the mooring of power boats will be difficult to enforce, or that property owners would be encouraged to engage in prop dredging, the simple fact of the matter is that the very shallow depths in which many of these shorter docks and piers would be constructed preclude access by motor powerboats.

**1. Full Name and Address of Petitioners:** Craig and Tracy Cinelli, 60 Burtwood Court, Allendale, New Jersey 07401.

**2. The Substance or Nature of the Rulemaking requested:**

The Recreational Docks and Piers Rule, N.J.A.C. 7:7-12.5, provides in relevant part that the construction of recreational docks and piers is conditionally acceptable, but then imposes various conditions on where and how those structures may be built. N.J.A.C. 7:7-12.5(c) and (d) in particular require that recreational docks and piers that are proposed in areas considered to be shellfish habitat and/or submerged vegetation habitat areas must comply with several additional requirements. It does so by incorporating by reference the Shellfish Habitat and Submerged Vegetation Habitat Rules.

The Submerged Vegetation Habitat Rule, N.J.A.C. 7:7-9.6, provides in relevant part that construction of a single recreational dock or pier is allowed only if a minimum water depth of 4 feet at mean low water is present in the area where the boats will be moored (N.J.A.C. 7:7-9.6(b)(6)(vi)). The Rule makes no allowance for a structure where no boat mooring is proposed.

The rationale explains that New Jersey's estuarine waters are "relatively shallow, rich in nutrients and highly productive", and that excluding boating activities where the water depth is less than 4 feet will ensure that "impacts from boating are not likely to be destructive to the plants or their habitat environment." See N.J.A.C. 7:7-9.6(e).



The Shellfish Habitat Rule, NJAC 7:7-9.2, allows the construction of a single recreational dock or pier associated with a single-family dwelling, but requires that the structure be designed and constructed in a manner that reduces adverse impacts to the marine ecosystem to the extent practicable. This rule, unlike the Shellfish Habitat Rule, does not explicitly require that docks extend to a location where a minimum water depth of – 4 feet MLW is present where boats are to be moored, although it does include a confusing cross-reference to the Submerged Vegetation Habitat Rule in that regard. See N.J.A.C. 7:7-9.2(d)(3)(ii)(2).

The rationale that accompanies the Rule explains that “there is an inherent conflict between the protection of shellfish habitat and water quality and boating related activities, such as mooring and dredging, though both are important water-dependent activities in New Jersey” (NJAC 7:7-9.2m). Again, neither the language of the Rule nor the Rationale make allowance for structures where no boat mooring is proposed.

### **3. Reasons for Request:**

The Recreational Docks and Piers rule, the Shellfish Habitat rule and the Submerged Vegetation Habitat rule are collectively interpreted and applied by the Department as meaning that recreational docks in those special areas must, *in all cases*, extend to a depth of 4 feet at mean low water, even if an applicant has no interest in mooring powerboats. Property owners, in many cases, are interested in constructing much shorter docks to be used for launching small boats, fishing, crabbing, swimming and simply enjoying access to the water. In other cases, such as this one, shallow water depth precludes the construction of a dock. Although the Rules could be read as allowing such structures, they are not applied in that fashion. It is for that reason that rulemaking is required.

### **4. Petitioner’s Interest in the Request:**

The Petitioners own property on West Point Island in Lavallette Borough, fronting on Barnegat Bay. They do not have a dock and therefore enjoy no over-water access, although they do have a small beach area. In 2011, Petitioners submitted a Coastal Permit application seeking to construct a 4’ x 114’ dock with a 6’ x 20’ terminus, boat lift, personal watercraft lift and mooring piles. That application, File No. 1515-11-0015.1 WFD 110001, was denied on November 17, 2011. It was denied on the basis that the dock, which was designed to reach a depth of 4 feet at mean low water, would be located too close to the nearest maintained channel, and therefore violated the



requirement in the Recreational Docks and Piers rule that proposed docks not interfere with navigation. See NJAC 7:7-12.5 (b)(9).

The Petitioners, who still have no over-water access, recently conducted a bathymetric survey of water depths adjacent to their property. That survey, a copy of which is attached, determined that water depths are such that a depth of four feet at mean low water is not present at any point between the waterward edge of their property and the channel, making permitting and construction of a dock impossible.

The Petitioners have young children, and at this point have an interest only in constructing a dock of sufficient length to allow fishing, swimming, crabbing, overwater access and the use of small craft.

**5. The statutory authority under which the Department may take the requested action.**

The Department has ample authority under the Coastal Area Facility Review Act, NJSA 13:19-1, the Waterfront Development Law, NJSA 12:5-3 and the Coastal Zone Management Rules to take the requested action.

**6. Existing Federal or State Statutes and Rules which may be pertinent to the request.**

The requested action, if implemented, would likely reduce adverse impacts to shellfish and submerged vegetation habitat that result from the construction of docks and piers of a length needed to reach a depth of 4 feet at mean low water. The impacts of a rule amendment will, therefore, be beneficial to the environment, in keeping with the Coastal Facility Review Act and the Federal Coastal Zone Management Act and related statutes.

**CONCLUSION**

The Petitioners, for the reasons stated above, hereby petition the Department to modify the Recreational Docks and Piers rule, the Shellfish Habitat rule and the Submerged Vegetation habitat rule to allow the construction of structures that do not extend to a depth of 4 feet mean low water, provided that they will not be used for the mooring of powerboats. The Petitioners propose, in the



alternative, that the Department clarify that these rules, as currently written, allow the construction of docks that do not reach four feet of depth mean low water provided that they are not be used for the mooring of powerboats.

As noted above in the Summary, the Petitioners believe that this proposal will not in any way undermine the Department's goal of minimizing adverse impacts to marine resources that might result from the operation of powerboats in shallow water. While there may be a concern that a permit condition that prohibits the mooring of power boats would be difficult to enforce, or that property owners would be encouraged to engage in prop dredging, the simple fact of the matter is that the very shallow depths in which many of these shorter docks and piers would be constructed will preclude access by motor powerboats.

The Administrative Procedure Act requires that the Department act on this Petition, within 60 days following its receipt. We therefore look forward to hearing from you.

Sincerely,

CULLEN AND DYKMAN LLP

Neil Yoskin

NY/cl

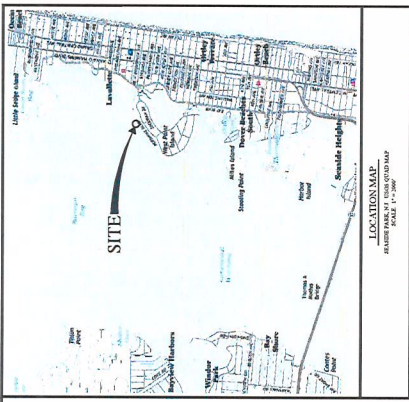
Enclosure

cc(via e-mail):

Tracy and Craig Cinelli

Jennifer Moriarty, NJDEP

Vincent Mazzei, Ass't. Commissioner, NJDEP



**GENERAL NOTES:**

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- TAX LOT AND BLOCK INFORMATION IS AS OBTAINED FROM THE DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT, NEW JERSEY DEPARTMENT OF TRANSPORTATION PLANNING DIVISION, 2020 OCEAN COUNTY GIS DATA.
- VERTICAL DATUM - NEW JERSEY STATE PLANE COORDINATE SYSTEM NORTH AMERICAN DATUM 1983 (NAD83).
- VERTICAL DATUM - UPWARD SPOT ELEVATIONS ARE REFERENCED TO THE NORTH AMERICAN DATUM 1983 (NAD83).
- BATHYMETRIC DATUM - BATHYMETRIC SPOT ELEVATIONS AND CONTOURS ARE REFERENCED TO THE MEAN LOW WATER DATUM.
- BATHYMETRIC DATA IS REFERENCED TO BENCHMARK STAMPING E 69, NCS FID 4000 AS IS SHOWN ON THE BENCHMARK SURVEY SHEET, NEW JERSEY GEOLOGICAL SURVEY, BENCH MARK ELEVATION SHEET 100-2000 OCEAN BEACH, WAREHOUSING UNIT, NJ.
- THE COLLECTION OF BATHYMETRIC DATA WAS CONDUCTED PER THE CORRECTION OF ENGINEERS MANUAL (ENR110-2-1003) UTILIZING AN ECHOSOUNDER WITH A SINGLE BEAM TRANSDUCER. DEPTH TECHNIQUES WITH RIN-CP CAPABILITIES.
- SPOT ELEVATION LINES AND CONTOUR LINES SHOWN ORIGINATED FROM A LARGER POINT DATUM.
- CONTOURS AND SPOT ELEVATIONS WERE CREATED USING HYDRACK 2021.
- NOT ALL UPWARD OR WATERWAD IMPROVEMENTS SHOWN.

TIDAL ELEVATION INFORMATION IS REFERENCED MEAN LOW WATER			
TIDAL REFERENCE DATUM:	MEAN LOW WATER	MEAN HIGH WATER	MEAN TIDE
MEAN HIGH WATER (MHW)	0.87	0.33	0.50
MEAN HIGH WATER (MHW)	0.50	0.00	0.25
MEAN TIDE (MT)	0.00	-0.25	-0.125
MEAN LOW WATER (MLW)	0.00	-0.25	-0.125
MEAN LOWER LOW WATER (MLLW)	0.00	-0.42	-0.21
NATIONAL GEODETIC VERTICAL DATUM (NGVD 29)	0.78	-1.14	-0.18

TIDAL INFORMATION IS BASED ON INFORMATION OBTAINED FROM NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION (NOAA) TIDAL INFORMATION PROGRAM, (NOAA TIDE GAUGE #8500000).

**RIoux ENGINEERING LLC**  
Engineers & Surveyors

PRELIMINARY

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TEL: 732-329-1100  
WWW.RIOUXENGINEERING.COM

**PARTIAL HYDROGRAPHIC SURVEY**  
BARNEGAT BAY  
SEAWARD OF BLOCK 961, LOTS 18, 19, 20 & 21  
CINNELLI RESIDENCE  
41 CINCINNATI BOULEVARD

DATE: 07/24/21  
PROJECT: BARNEGAT BAY HYDROGRAPHIC SURVEY

PROJECT NO: 21-001  
SHEET NO: 1 OF 1

SCALE: 1" = 50'

PROJECT LOCATION: BARNEGAT BAY, SEASIDE HEIGHTS, NJ