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## **OFFICE OF POLICY PLANNING AND SCIENCE**

### **COASTAL MANAGEMENT OFFICE**

#### **Coastal Zone Management**

#### **Mainland Coastal Centers**

**Adopted Amendments: N.J.A.C. 7:7E-5.2, 5B.3, 5B.4 and 7:7E Appendices 2, 3 and 4**

**Adopted New Rules: N.J.A.C. 7:7E-5B.6 and 7:7E Appendix 5**

Proposed: July 5, 2005 at 37 N.J.R. 2351(a) (See also 37 N.J.R. 2985(a))

Adopted: December 21, 2005, by Bradley M. Campbell, Commissioner, Department of Environmental Protection

Filed: December 28, 2005

Authority: N.J.S.A. 13:19-1 et seq.

DEP Docket Number: 17-05-05/510

Effective Date:

Expiration Date: January 7, 2008

The Department of Environmental Protection (Department) is adopting amendments to the Coastal Zone Management rules, N.J.A.C. 7:7E, that re-establish the boundaries of certain coastal centers located on the mainland that expired on February 7, 2005 pursuant to N.J.A.C. 7:7E-5B.3(g). Coastal centers are used in determining the impervious cover limits and vegetative cover percentages for development proposed in the CAFRA area.

Under this adoption, 28 coastal centers on the mainland located within 11 municipalities have been re-established. Additional expired coastal centers may be re-established if a municipality takes specific steps to actively engage in the State Planning process.

The re-established coastal centers are subject to certain conditions to assure environmental impacts in these areas are minimized. Wetlands, endangered and threatened wildlife habitat, Natural Heritage Program priority sites, open space, special water resource protection areas and Coastal Critical Environmental Sites are not

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considered part of the mainland coastal center, except for CAFRA applications received prior to February 7, 2005. Further, the re-established mainland coastal centers will remain effective until either the coastal center becomes a CAFRA center or until March 15, 2007, whichever is earlier.

The proposed amendments and new rules were published in the New Jersey Register on July 5, 2005 (See 37 N.J.R. 2351(a)). On August 15, 2005, the Department published a Notice of Administrative Corrections and Comment Period Extension as the Department discovered that the July 5, 2005 proposal inadvertently failed to identify the West Cape May coastal center as an expired coastal center in Appendix 4. (See 37 N.J.R. 2985(a)) The comment period for the August 5, 2005 proposal closed on September 3, 2005 and the extended comment period for the West Cape May coastal center closed October 14, 2005.

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

A public hearing was conducted on August 11, 2005, at Richard Stockton College of New Jersey, Townsend Residential Life Center Multi Purpose Room, Jimmy Leeds Road, Pomona New Jersey. Ruth Ehinger, Manager of the Department's Coastal Management Office, served as the hearing officer. Thirteen members of the public provided oral comments. After reviewing the testimony given at the public hearing and written comments received during the comment period, Ms. Ehinger recommended that the Department adopt the proposed amendments and new rules with modifications to address concerns raised by the public as described in the Summary of Public Comments and Agency Responses below.

The public hearing record is available for inspection in accordance with applicable law by contacting:

New Jersey Department of Environmental Protection  
Office of Legal Affairs  
Attn: Docket Number 17-05-05/510  
P.O. Box 402  
Trenton, New Jersey 08625-0402.

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

The following persons submitted written comments and/or made oral comments at the public hearing:

1. Fred Akers, The Great Egg Harbor Watershed Association
2. Michele Byers, New Jersey Conservation Foundation
3. Al Caggiano
4. Jody Carrara, Association of New Jersey Environmental Commissions
5. Robert Crespi, Esq., on behalf of Dover Township
6. Robert Crespi, Esq., on behalf of K & K Developers, Inc.
7. Tim Dillingham, American Littoral Society
8. Christopher Gigliotti, Esq., on behalf of Cornerstone Commons Urban Renewal LP
9. Lori Grifa, Esq. on behalf of Dover Township
10. Richard Hluchan on behalf of K Hovnanian Shore Acquisitions, LLC
11. Richard Hluchan on behalf of Sturdy Savings Bank
11. Edward A. Hogan on behalf of Stop and Shop Supermarket Companies, Inc.
12. Paul Kenney, US Department of Interior, National Parks Service
13. Nicholas Menas, Esq. on behalf of Diocese of Camden
14. Philip Nicastro, Esq.
15. Michael Pisaruro, Esq. on behalf of the New Jersey Environmental Lobby
16. Jaclyn Rhoads, Pinelands Preservation Alliance
17. Jeffrey Tittel, Sierra Club
18. Sandra Walden on behalf of Haven House of St. John of God
19. Nancy Wittenberg, New Jersey Builders Association
20. Kenneth D. Wolfe, Esq, on behalf of The Diocesan Housing Service Corporation of the Diocese of Camden, Inc.
21. Ernie Utsch, Utsch's Marina

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

**N.J.A.C. 7:7E-5B.3 Boundaries for Coastal Planning Areas, CAFRA enters, CAFRA cores, and CAFRA nodes; Non-mainland coastal centers**

1. COMMENT: In 1968 the National Wild and Scenic Rivers Act (P.L. 90-542) was established to protect and enhance certain selected rivers' scenery, water quality, recreation, habitat and cultural resources for present and future generations. The Great Egg Harbor and Maurice Rivers are two such rivers entirely within the State of New Jersey that have been designated as amendments to the Wild and Scenic Rivers Act under the statutes (P.L. 102-536 and P.L. 103-162, respectively).

The management of these rivers, as detailed in their respective Comprehensive Management Plans, is dependent upon the cooperation among the National Park Service, the State of New Jersey, and the counties and municipalities through which these rivers flow. In an effort to reinforce such cooperation, the commenters request the underlined language be added to N.J.A.C. 7:7E-5B.3(b) as follows:

“For those new or changed community development boundaries or new or changed core or node boundaries which are located within the Pinelands National Reserve or within National Wild and Scenic River Corridors of the Maurice and Great Egg Harbor Rivers and their designated tributaries, the Department shall also, in consultation with the New Jersey Pinelands Commission, or the National Park Service's National Rivers Program, determine whether the boundaries are consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, section 502, creating the Pinelands National Reserve and the Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.), and the National Wild and Scenic Rivers Act P.L. 90-542, as amended, creating the state's National Wild and Scenic Rivers. Within 90 calendar days after the date on which the State Planning Commission formally approves such boundary, the Department shall publish in the New Jersey Register a notice of its

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determination to accept, reject, or reject and revise the boundary for the purposes of N.J.A.C. 7:7E-5 and this subchapter.” (1, 12, 16, 4)

RESPONSE: The Department agrees that all levels of government need to protect wild and scenic waterways and ensure that any development is compatible with the River Management Plans.

The Coastal Zone Management rule’s Wild and scenic river corridors rule at N.J.A.C. 7:7E-3.46(b)2 requires development to comply with the standards set forth in the Federal River Management Plan adopted pursuant to the National Wild and Scenic Rivers Act for the wild and scenic river corridor, if one exists. Both the Comprehensive Management Plan and Environmental Impact Statement for the Great Egg Harbor National Scenic and Recreational River (May 2000) and the Comprehensive Management Plan and Environmental Impact Statement for the Maurice National Scenic and Recreational River (January 2001) are Federally approved River Management Plans. The Department believes that development intensity within the wild and scenic river corridors of these rivers is best addressed through the approved Federal River Management Plans, and therefore the suggested language is not necessary.

#### **N.J.A.C. 7:7E-5B.6 Mainland coastal centers**

2. COMMENT: These regulations will remove environmentally sensitive resources from within the designated boundaries of coastal centers, provide regulatory incentives to avoid alterations of these areas and reduce the overall intensity of growth related to CAFRA regulated development within the centers. (2, 4, 7)

3. COMMENT: The commenter supports the rule to re-establish the boundaries of the coastal centers on the mainland. The re-establishment of the Borough of Point Pleasant’s coastal center boundary will enable it to engage in the State Planning process and benefit from the comprehensive planing analysis provided by the plan endorsement process. In addition, the re-establishment will enable the commenter to obtain the

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required CAFRA permit to construct the municipally-approved compensatory parking spaces that it needs to return its development to its prior level of functionality.

The commenter further supports the proposal because it provides for both environmental protection and the accommodation of certain future development needs in suburban and urban areas. The proposal continues to preserve ecologically sensitive and fragile lands, recognize Coastal Critical Environmental Sites in the CAFRA area, and incorporate safeguards to protect water quality, wetlands and endangered and threatened species. The proposal will also foster economic development in re-established coastal centers, encourage efficient development of areas with existing infrastructure, and permit certain beneficial projects. (11)

4. COMMENT: The commenter acknowledges that the proposed regulations reasonably resolve the problems caused by the February 7, 2005 lapse of the coastal center boundaries and therefore supports the adoption of these regulations. (10, 11)

5. COMMENT: The commenters support the rulemaking to re-establish coastal centers located on the mainland. (13)

6. COMMENT: The commenter supports this rule, in particular because it makes accommodations for small development. The commenter notes that proposed developments in the CAFRA area less than one acre in size can not approach the impervious cover limits established under the Coastal Zone Management rules because they must also comply with municipal setback and parking requirements. For example, a site with a 70 percent or 80 percent impervious cover limit under the Coastal Zone Management rules would in reality only be 50 percent as a result of municipal requirements. (14)

RESPONSE TO COMMENTS 2 THROUGH 6 ABOVE: The Department acknowledges these comments in support of the rule.

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7. COMMENT: The extension of coastal centers is ill-advised and therefore the Department should withdraw this rule. The re-establishment of coastal centers on the mainland will, in the long run, do little to improve the economic health of this State while causing serious and potentially long-term harm to the environment, our communities and the State's economic health. Further, extending the coastal centers violates the compromise reached in the past between the various parties, rewards those municipalities who did not make good faith efforts to meet their obligations and fosters an attitude of entitlement which will only cause demands for future extensions. (15)

RESPONSE: Under this rule, the re-establishment of the mainland coastal centers will be temporary as they expire no later than March 15, 2007. In re-establishing the mainland coastal centers, the Department considered the impacts of potential development on the water and natural resources of the centers. To protect these resources, six environmentally sensitive areas, when located within a re-established coastal center, are not considered part of that center. There are 44 coastal centers that could be re-established in accordance with this rule. The total area of these centers is approximately 43,074 acres. Of these 43,074 acres, approximately 16,881 acres are undeveloped. After removing the six environmentally sensitive areas from the undeveloped area, approximately 4,435 acres could potentially be developed. However, these 4,435 acres may be further encumbered by other special areas as set forth in the Coastal Zone Management rules at N.J.A.C. 7:7E-3. Accordingly, while the amendment will allow for further economic development and encourage smart growth, the limitations included in the rule will protect significant environmental areas.

8. COMMENT: The Department should examine and promulgate impervious cover rules that will protect water supplies, wetlands and coastal resources while still permitting reasonable growth given the physical, chemical and biological attributes of the coastal region. These recommendations will strike an appropriate balance between economic growth and environmental protection. (15)

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RESPONSE: The Department agrees that it is important to protect water supplies, wetlands and other coastal resources and that a balance is needed between growth and protection of environmental resources. The Department, through the CAFRA permitting process evaluates the impacts of a proposed development on a site-specific basis. Further, the Department, pursuant to CAFRA at N.J.S.A. 13:19-10 is required to make certain findings prior to the issuance of a CAFRA permit. These finding require for example, that the proposed development conform with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air standards. In addition to the protection and balance provided by the Coastal Zone Management rules and limits on coastal centers, the comprehensive planning process of the plan endorsement process will consider impacts of growth, population trends and other issues that impact, among other things, environmental resources. It is this process that provides a mechanism to determine whether a particular center is capable of accommodating the long-term growth and development needs of the community while protecting coastal resources. Once a municipal plan is endorsed by the State Planning Commission, the Department will review the appropriateness of the boundaries of the centers and planning areas for incorporation into the CAFRA Planning Map. These boundaries will be approved as CAFRA centers and Coastal Planning Areas only if the boundaries are consistent with CAFRA and the Coastal Zone Management rules thereby assuming that environmental impacts have received appropriate consideration.

9. COMMENT: When CAFRA was enacted, the Legislature noted that “certain portions of the coastal area are now suffering serious adverse environmental effects resulting from existing development activity impacts that would preclude or tend to preclude those multiple uses which support diversity and are in the best long-term, social, economic, aesthetic and recreational interest of all people of the state.” This statement is even truer today than it was in 1973. CAFRA and its implementing regulations are designed to protect the natural and human environment from human activities. Extending the coastal centers runs counter to this mandate.

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The original intent of the coastal center rules was to permit for already planned growth and to encourage municipal planning for growth. The coastal centers were a compromise between competing interests and were intended from the very beginning to be for a relatively short time. To provide extensions as set forth in this rule proposal would run counter to the original intent of the coastal center designations in 2000 and to the Department's mission to protect the environment.

When planning for growth in our coastal areas, consideration should be given as to whether these areas can accommodate the growth, taking into account available land, suitability of the land for the proposed development, whether there is sufficient water supply for anticipated development, and what environmental impact the proposed growth will have upon the watershed, as well as the character and nature of the surrounding area. The extension of the coastal centers is bad for the natural and human environment and the State's economy. If these rules are promulgated, over time the negative consequences will far outweigh the positive effects. (15)

RESPONSE: As described in more detail in response to Comment 7, the Department has limited the duration of re-established coastal centers and excluded certain environmentally sensitive areas to further protect coastal resources in recognition that the comprehensive planning of the plan endorsement process has not yet been completed. The Department believes that these measures will prevent the negative consequences described by the commenter above.

10. COMMENT: The mandate of CAFRA was to protect coastal areas. In fact, the Legislature declared, "the coastal area and the State will suffer continuing and ever-accelerating serious adverse economic, social and aesthetic effects unless the State assists, in accordance with the provisions of this act, in the assessment of impacts, stemming from the future location and kinds of developments within the coastal area, on the delicately balanced environment of that area." By all accounts, that "delicately balanced environment" has become out of balance by improper and unplanned growth.

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Our oceans, bays, waterways, watersheds and aquifers are in trouble, predominantly because of human actions. The condition of the Northeast coast estuaries as measured by the water quality index is fair to poor. New Jersey is not immune to these statistics and there continue to be numerous beach closings. "Dead zones" are another example of the health of our coastal ecosystem. "Dead zones" are water areas in which there is minimal, if any, life and are a result of the impacts of human activities. "Dead zones" are found in the Delaware River, Great Egg Harbor River, Mullica River, Barnegat Inlet, and Raritan Bay. Continuing the coastal centers and the extremely high impervious cover that the centers allow will only increase the pressure on these waters, as well as others resulting in more closings and increasing dead zones. The commenter provided various references supporting his assertions.

The rules are detrimental to our long term economic interests. By encouraging development outside of already developed areas, the rules will actually be detrimental to economic growth. Increased development will destroy the very thing which makes New Jersey special and generates significant income and revenue. In New Jersey, tourism is the second largest industry in the State with expenditures of 30 billion dollars in 2003. Most of the tourism dollars spent and generated is in our shore communities because of the beautiful beaches and recreational opportunities, including fishing. (15)

RESPONSE: The Department has adopted numerous measures over the past years to address water quality impacts of development. For example, in February 2004 the Department adopted the Stormwater management rules, N.J.A.C. 7:8, which set forth the required components of regional and municipal stormwater management plans, and establish stormwater management design and performance standards for proposed developments. The design and performance standards for new development include groundwater recharge, runoff quantity controls, runoff quality controls, and buffer requirements in special water resource protection areas. The rule re-establishing the mainland coastal center further recognizes the sensitivity of Category one waters by excluding special water resource protection areas from the mainland coastal center boundary. As explained in response to Comment 7, the Department has additionally

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included limitations in these amendments that allow increased opportunities for smart growth while protecting important environmental resources.

Wreck Pond, located in the Boroughs of Sea Girt and Spring Lake, Monmouth County, causes recurring beach closures at nearby ocean recreational areas due to the quality of its discharge. During and after rainfall, the discharge increases the concentration of pathogen indicator species, fecal coliform and enterococci for nearshore ocean waters to substandard levels. In 2001, 35 ocean beach closings were caused by Wreck Pond; 16 in 2002; 58 in 2003 and 51 in 2004. These closings were 87.5 percent of the total ocean beach closings statewide in 2001; 100 percent of the closings in 2002; 72.5 percent 2003 and 86.5 percent of the total closings statewide in 2004. The Department is currently taking steps to address the problems associated with Wreck Pond.

11. COMMENT: The commenter supports the extension of coastal centers under the rules for areas which are already substantially developed and which are seeking redevelopment. The commenter supports these areas as coastal centers. While the commenter supports the formula for calculating impervious cover not to include the environmentally sensitive areas as set forth at N.J.A.C. 7:7E-5B.6(e), the commenter objects to maintaining the impervious covers at the levels currently found at N.J.A.C. 7:7E-5B.4 as the levels are excessive and will do nothing to further strengthen the protection for our valuable and degraded natural resources. In addition, experts believe that once a watershed reaches ten percent or more impervious cover, the watershed's health will be seriously impaired. According to the commenter, many of our watersheds are near or exceeding this ten percent threshold. The high levels of impervious cover that would be allowed under the rules will only exacerbate this degradation. The 300 foot and 150 foot buffers provided for under these rules and related laws will be insufficient to deal with increasing runoff from the impervious cover. While the exclusion of wetlands as environmentally sensitive land under N.J.A.C. 7:7E-5B.6(f) is appropriate, the impervious cover limits are excessive and will not be a benefit to the State. (15)

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RESPONSE: The Department has historically used impervious cover as a way to ensure that CAFRA regulated development in the coastal zone is protective of natural resources and the health and welfare of our citizens. The impervious cover limits established in the Coastal Zone Management rules enables the Department to achieve a number of longstanding policy objectives in the CAFRA area, including protection of environmentally sensitive areas, agricultural lands and open space, more efficient use of infrastructure, concentration of development, and protection of water and air sheds.

The Department did consider regional and cumulative water quality impacts in establishing the impervious cover limits adopted February 7, 2000 (See 32 N.J.R. 503(a)). The impervious cover limits recognize already existing patterns of development and balance these with resource protection. Further, the limits start at three percent, which is below the limits cited as causing water quality impairment. Development approved under these rules would be required to use best management practices to treat stormwater prior to discharge into a wetland or waterway. Further, the design and performance standards of the Stormwater Management rules, N.J.A.C. 7:8, including groundwater recharge, runoff quantity controls, runoff quality controls, and buffer requirements in special water resource protection areas, will apply to the vast majority of CAFRA developments subject to the impervious cover limits.

12. COMMENT: Permitting the coastal centers to be extended will create additional pressures on the human environment in the area of water supply. There is a very real question as to whether there is sufficient water supply to handle increased development. The commenter cited an EPA report that indicates that there is a regional decline in water levels in the surrounding aquifers of the New Jersey coastal plain. If our aquifers are permanently impacted, the solutions will be very expensive and inconvenient to implement.

Not only would increased development stress the water supply, but it will add to the contamination of the aquifers. While there are several regulatory and statutory requirements to protect the aquifers and streams, these water resources will none the less

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be stressed and contaminated by increased impervious cover in the 70 to 90 percent range. (15)

RESPONSE: The Department, pursuant to Section 10 of CAFRA N.J.S.A. 13:10-10, is required to make specific findings prior to the issuance of a CAFRA permit. Several of the Section 10 findings address proposed development impacts on water supply and water quality. For example, these findings require that the proposed development: conform with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards; prevent air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region; and result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies. Therefore water supply impacts will be accounted for in the review of a CAFRA permit application.

13. COMMENT: The increased development permitted by the rule will lead to continued contamination and depletion of our food supply, including food obtained from our oceans. Studies indicate that 25 to 30 percent of the commercial fish stocks were over-exploited. Further, pollution from development is stored in the flesh of the fish and shellfish we eat. The commenter cited a US EPA report concerning contaminants in fish tissue, and the Department's fish and crab advisories as examples of the effects of pollution on fish stocks.

This pollution not only flows directly into the water, but is also deposited by our atmosphere into our waterways. Automobiles, incinerators, coal-fired power plants, agriculture and industrial facilities are a large part of the source of atmospheric pollution including toxics. By increasing development along the shore, we are increasing the amount of non-point source pollution entering into our waterways and eventually into our food supplies. We are also increasing power demands, thus increasing the amount of atmospheric pollution entering our waterways. By permitting the extension of the coastal

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centers located on the mainland, municipalities will not reap benefits, but will instead, be burdened by higher property costs and increased pollution.

As development increases, our fisheries will continue to diminish. Diminished fisheries will result in less recreational fishing opportunities. New Jersey also has a commercial fishing industry which will be impacted by decreased fish stocks. How much revenue and income will be lost to commercial fisheries? How much income will be lost to boat rentals, marinas, and party boats? As pollution and congestion increases, people will not choose the New Jersey shore as a vacation destination. Our rental industry, recreational industry and others will lose income. (15)

RESPONSE: Under this rule, the re-establishment of the coastal centers will be temporary as they expire no later than March 15, 2007. In re-establishing the coastal centers, the Department considered the impacts of potential development on the water and natural resources of the coastal area. There are 44 coastal centers that could be re-established under this rule. The total area of these centers is approximately 43,074 acres. Of these 43,074 acres, 26,193 acres are developed and 16,881 are undeveloped. 12,446 acres that are undeveloped are classified as one of the six environmentally sensitive features that are not considered part of the mainland coastal center boundary in accordance with N.J.A.C. 7:7E-5B.6(e). As a result, approximately 4,435 acres could be developed, although they may be further encumbered by other special areas set forth at N.J.A.C. 7:7E-3. Accordingly, while the amendment will allow for further economic development and encourage smart growth, the limitations included in the rule will protect significant environmental areas.

In addition, any proposed development would have to address all Coastal Zone Management rules, N.J.A.C. 7:7E including those pertaining to stormwater, traffic, air quality and water quality. Moreover, the Department is required under Section 10 of CAFRA to make certain findings prior to the issuance of a CAFRA permit. These finding address impacts of the proposed development on air, water and the natural functioning of fish processes at the site and within the surrounding region. Therefore, the

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Department does not agree that adoption of this rule will have the affects cited by the commenter.

14. COMMENT: The commenter opposes any extension for the re-establishment of the coastal centers (as listed in Appendix 2), and strongly suggests that all of the CAFRA coastal centers boundaries expire. Municipalities wishing to delineate coastal centers should go through the Office of Smart Growth Plan Endorsement Process to establish the boundaries utilizing good planning and a full inventory of their natural resources. There is no planning to go with the higher impervious cover limits for these centers such as roads, sewer and water lines nor planning to fully determine exclusion of sensitive environmental areas. Extending existing center boundaries would be a reward for poor planning.

A perfect example of poor planning and an area where the coastal center boundary should be allowed to expire is in the coastal hamlet of Corbin City, Atlantic County. Corbin City is within a Forest Management Area designation in the Pinelands Comprehensive Management Plan (CMP) for the Pinelands National Reserve. The center boundary in Corbin City borders and partially includes wetlands. This area of Corbin City is designated as a Fringe Planning Area. The goal of the CAFRA regulations is to channel growth to areas with existing infrastructure and away from environmentally sensitive areas. The definition of Forest Management Area according to the Pinelands CMP is an area in which uses include low density residential and commercial development, agriculture, forestry and recreation. A coastal center within a Forest Area defies the purpose and intent of this designation and should not be granted. (16)

RESPONSE: The Department agrees that comprehensive planning is essential in the delineation of appropriate centers. The establishment of the coastal centers by the Department in 2000 was never intended to confer the benefits of a CAFRA center until the municipalities had completed a comprehensive planning process with the State Planning Commission that considered growth and population trends and other issues that impact environmental resources. The re-establishment of the expired coastal centers is

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only for a limited time period with all coastal centers that continue to meet the requirements of the rules expiring March 16, 2007. The ability to re-establish an expired coastal center has lead to 12 municipalities becoming engaged in the plan endorsement process. This is in addition to the 11 municipalities with coastal centers already engaged in the plan endorsement process. It is the plan endorsement process that provides the mechanism to determine whether a particular center is capable of accommodating the long-term growth and development needs of a community while safeguarding its environmental resources.

With respect to the Corbin City expired coastal center, this coastal center was one of the original 96 coastal centers delineated in the Department's December 1998 proposal (See 31 N.J.R. 2042(a)) as Corbin City had indicated to the State Planning Commission during the preparation of the 1992 State Plan its intent to have a formal center designated. Corbin City, in accordance with N.J.A.C. 7:7E-5B.6(b)2i submitted its resolution requesting a pre-petition meeting with the Office of Smart Growth prior to August 4, 2005. Further, the municipality held a pre-petition meeting with the Office of Smart Growth on September 27, 2005 in accordance with N.J.A.C. 7:7E-5B.6(b)2ii. To become re-established, the municipality's petition for plan endorsement must be declared complete by the Executive Director of the Office of Smart Growth by March 15, 2006. Should the Corbin City expired coastal center be re-established, the six environmentally sensitive features listed at N.J.A.C. 7:7E-5B.6(e) would not be considered part of the re-established coastal center. According to the Department's Geographic Information System, the Corbin City expired coastal center consists of approximately 168 acres, 105 of which are undeveloped. Of the 105 undeveloped acres, 85 acres are one of the six environmentally sensitive areas pursuant to N.J.A.C. 7:7E-5B.6. Should Corbin City's petition for plan endorsement be endorsed by the State Planing Commission, the Department would review the appropriateness of the State Planning Commission designated center as a CAFRA center through the process described at N.J.A.C. 7:7E-5B.3(b). As part of that review, the Department would consult with the New Jersey Pinelands Commission to determine whether the boundaries of the center are consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978,

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P.L. 95-625, Section 502 creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979, N.J.S.A. 13:18A-1 et seq.

15. COMMENT: The commenter opposes the proposal to extend the expiration deadline for certain coastal centers and believes that these centers will bring more sprawl, pollution and traffic to New Jersey's fragile coast. The rule should be immediately withdrawn and the centers allowed to expire as scheduled.

This rule will invite tremendous growth and further jeopardize the ecological integrity and economic vitality of New Jersey's most precious and already over-developed coastal resource. Instead of promoting more over-development, the Department should work to close CAFRA loopholes and strengthen and improve the CAFRA regulatory framework; not make efforts to bring more sprawl to the shore. Given the more frequent occurrence and severity of hurricanes, the Department is not acting responsibly by proposing programs that will only allow for more development on our coast.

Moreover, the commenter does not believe that the Department has the authority to act in such a manner that is tantamount to legislative action. It is outside the scope of regulatory matters and violates the statutory language dictating the time period for the centers which would require new legislation, not regulation to provide an extension for any of the centers.

To revive the coastal center program after its track record and demonstrated failure is very poor public policy and a major threat to the shore. Any efforts by the Department to grandfather coastal centers is an affront to coastal communities, a giveaway to big developers and will destroy the natural resources and quality of life for residents who live or vacation there. This rule is improper, unauthorized and likely illegal. (17)

16. COMMENT: This rule undermines the Department's commitment to uphold the Whitman administration's rules by letting the coastal centers expire. Contrary to the Department's public assertion that these centers would expire as scheduled, the Department has taken affirmative actions to extend this program by selecting a few center applications where "equities of a proposed development or a particular municipality may

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warrant focused relief from the strict limitations” imposed by CAFRA. These arbitrary hardship standards are not authorized under the current regulations or the implementing legislation and only serve to move forward the projects of politically connected developers. Please identify and cite the statutory reference authorizing focused relief from the CAFRA law. (17)

RESPONSE: The 1993 amendments to CAFRA required that the rules adopted to implement those amendments be closely coordinated with the State Plan. These amendments did not prescribe the means by which the CAFRA regulations and State Plan should be “closely coordinated.” In response to the 1993 statutory amendments, the Department adopted new rules for determining impervious cover limits and vegetative cover percentages for sites in the CAFRA area based on the site’s location in a CAFRA center, core or node, Coastal Planning Area or coastal center (See 32 N.J.R. 503(a), February 7, 2000) with higher impervious cover allowed in a coastal or CAFRA center. These rules were intended to encourage development in areas with existing development and infrastructure, discourage sprawl development and protect sensitive natural resources.

The Department, pursuant to the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq., proposed amendments to the Coastal Zone Management rules to re-establish the coastal center boundaries located on the mainland that expired February 7, 2005. These amendments, adopted herein, complied with the rulemaking procedures of the Administrative Procedure Act and are within the authority granted to the Department.

After consideration of information presented to the Department in recognition that some local governments have committed substantial time and money on diligent efforts to obtain plan endorsement from the State Planning Commission, the Department determined it appropriate to re-establish the boundaries of coastal centers located on the mainland that expired February 7, 2005 for a limited term and in limited circumstances. Moreover, consistent with the statute, and to ensure adequate protection of the coastal area, including water and natural resources, six environmentally sensitive areas (endangered and threatened wildlife species habitat, Natural Heritage Program Priority

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sites, special water resource protection areas, wetlands and Coastal Critical Environmental Sites) when located within a re-established coastal center boundary are not considered part of the coastal center. The impervious cover limit for these areas is that of the underlying coastal planning area set forth at N.J.A.C. 7:7E-5B.4(e).

17. COMMENT: The CAFRA centers were a novel construct, representing the Department's first attempt to closely coordinate CAFRA regulations with the State Plan. The commenter indicated that they strongly opposed the centers from the outset based on numerous land use planning and environmental regulatory flaws. These flaws have become obvious over the five-year pilot period. The coastal centers themselves were poorly drawn with total disregard for regional planning and had no technical basis. Centers contain thousands of acres of environmentally sensitive lands, and allow a development intensity that has no relationship to sustainable land use. The availability of water and infrastructure capacity were never factored into the growth encouraged by centers. Accelerating saltwater intrusion, groundwater depletion, habitat destruction, impaired surface and groundwaters, and other development driven pollution that causes more and more beach closings were not considered in designing the centers. These problems continue to threaten the shore. Despite sufficient time and investment of State resources, towns have not adequately planned and zoned to make the centers workable and to protect environmental resources. Serious conceptual and on the ground flaws made apparent by the coastal centers have not been remedied by local governments, the State Planning Commission or the Department.

In the denial of the petition for Rulemaking filed by the New Jersey Builders Association, published in the March 7, 2005 New Jersey Register (see 37 N.J.R. 794(a)) the Department admits that "over the long-term [the centers] do not ensure that only growth that is protective of natural resources occurs." Please explain how this rule extending certain coastal centers does not conflict with the above concern. (17)

RESPONSE: The Department agrees and continues to believe that over the long term coastal centers are not the appropriate means to ensure that only growth that is protective

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of natural resources occurs. Therefore, the Department is re-establishing coastal centers for a limited time period with all coastal centers that continue to meet the requirements of the rules expiring March 16, 2007.

The Department has considered the impacts of the re-establishment of the coastal centers on coastal resources. In considering these impacts, the Department has determined it appropriate to not consider six environmentally sensitive areas (endangered or threatened wildlife species habitat, Natural Heritage Program Priority Sites, public open space, wetlands, special water resource protection areas and Coastal Critical Environmental Sites) as part of a re-established coastal center. Therefore, if any portion of the proposed development is located within one of these environmentally sensitive areas, the impervious cover limit for the proposed development becomes that of the underlying Coastal Planning Area.

The State Planning Commission's plan endorsement process is the appropriate mechanism to determine whether a particular center is capable of accommodating the long-term growth and development needs of a community while protecting coastal resources. The Department, pursuant to N.J.A.C. 7:7E-5B.3(b), must review all State Planning Commission designated centers for their appropriateness as a CAFRA center.

Lastly, in the CAFRA area, the Department reviews the impacts of a proposed development on coastal resources on a site-specific basis through the CAFRA permitting process. CAFRA, at N.J.S.A. 13:19-10, requires the Department to make certain findings before it can issue a CAFRA permit. These findings include, for example, impacts to water and air. Also see the Department's response to Comment 12.

18. COMMENT: This rule is not necessary as the State Planning Commission offers the plan endorsement process for the designation of local or regional centers. Should a municipality or developer want to receive approval for a center, they have the option of availing themselves of that process. The Department in the denial of the Petition for Rulemaking filed by the New Jersey Builders Association, published in the March 7, 2005 New Jersey Register (See 37 N.J.R. 794) states that:

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“...the comprehensive planning process of the State Planning Commission provides a mechanism to determine whether a particular center is capable of accommodating the long-term growth and development needs of a community while safeguarding the precious coastal resources... in fact, the Department believes that the plan endorsement process will assist in increasing protection of precious coastal resources since the planning analysis looks at both local and regional impacts of the proposed center...”

Additionally, the Department stated in this denial that “the five-year term set forth in the Coastal Zone Management rules provided sufficient time for municipalities to obtain center designation through the State Planning process.” Please explain how under the present rule extending certain centers, the five-year term is no longer warranted. (17)

19. COMMENT: The commenter opposes the re-establishment of the coastal centers located on the mainland. Extending these centers is a reward for not planning. The coastal centers have promoted sprawl and dense development in the Fringe, Rural and Environmentally Sensitive Planning Areas. Through time, the underlying planning area and density of development will be changed as a result of the coastal center designation. As a result, these areas will be redesignated as Suburban Planning Areas and as such, are inconsistent with the CAFRA rules, State Development and Redevelopment Plan rules and all other smart growth initiatives. (4)

RESPONSE TO COMMENTS 18 AND 19: Although the Department agrees that the comprehensive planning process of plan endorsement is the appropriate mechanism to determine whether a particular center is capable of accommodating the long-term growth and development needs of a community while protecting environmental resources, it is the Department’s position that since the coastal centers will only be re-established for a brief period and environmentally sensitive areas have been excluded the resulting development will be limited in scope, as discussed in more detail in response to Comment 13 above. Further, the re-establishment criteria for a coastal center has resulted in 23 municipalities with 44 coastal centers becoming engaged in the plan

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endorsement process. The Department believes this amendment will help encourage smart growth.

20. COMMENT: The Fast Track program will accelerate sprawl in both the centers and much of the CAFRA area because these areas are designated “smart growth areas,” despite the fact that there are serious pollution issues in Barnegat Bay; and the Cape May peninsula continues to be under a water withdrawal moratorium. These places will be overrun with traffic, sprawl and pollution, decimating the treasured value of these natural resources. (17)

RESPONSE: This is not a fast track program, but rather a Smart Growth initiative that is designed to encourage compact development, which is the antithesis of sprawl.

21. COMMENT: The coastal centers should be extended without restriction. The center concept was developed to meet the statutory requirement that the coastal rules closely coordinate with the State Development and Redevelopment Plan. The specific coastal centers were selected based on the State Plan and identified as necessary to accommodate growth. The Department’s proposed rulemaking does not meet these fundamental “smart growth” requirements and, therefore fails to comply with the relevant Executive Orders.

The proposal establishes two types of centers, mainland and non-mainland (N.J.A.C. 7:7E-5B.3). Non-mainland centers are those located on the barrier islands, oceanfront spits or peninsulas. These centers did not expire on February 7, 2005, as, according to the proposal, they had previously been determined to be “intensively developed.” There was no formalized scientific process for making this determination and no analysis done to see if similar conditions apply to any of the mainland coastal centers. This lack of technically based decision making emphasizes the arbitrary nature of the current proposal. If the duration of the center designation is to be based on the level of existing development, a detailed analysis of each of the centers should be done to determine

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which areas are at a development level that would not require future restrictions. Pending this analysis, all centers should be re-established. (19)

RESPONSE: No coastal center boundaries have been changed as part of this rule. Rather, the Department determined it appropriate to re-establish the coastal center boundaries that expired on February 7, 2005 for a limited time to enable comprehensive planning to occur as part of the endorsement process. The means through which to achieve CAFRA center status, which has no expiration date, is plan endorsement, not recognition as a coastal center. This comprehensive planning is essential since, unlike the barrier islands where the potential for impacts is somewhat limited due to geography and intensity of development, extensive undeveloped lands exist on the mainland. Although there may not be extensive undeveloped lands within a coastal center, comprehensive planning is needed to protect environmentally sensitive areas within the coastal center and its environs. Comprehensive planning includes an analysis in a broad, regional context, which is a means to address adverse secondary impacts of development. In order to satisfy the criteria to re-establish a coastal center boundary that expired on February 7, 2005, 23 municipalities with 44 coastal centers have become engaged in the plan endorsement process. The Department believes this amendment will help encourage smart growth.

22. COMMENT: The rule sets minimal requirements for the 11 municipalities who will benefit from not having completed the plan endorsement process. The Department in its rationale for the rule indicated that these towns had invested significant time and resources in the plan endorsement process, and therefore, it was inequitable to stop the process on February 7, 2005. While the municipalities have done some planning and submitted some documents, none of them have been judged to be complete in terms of those submissions and in several cases, the municipality has begun the process very late, such as in the case of Lakewood. It's difficult to argue that there's been significant investment made in this case. (4, 7)

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23. COMMENT: Instead of acknowledging the failures of the coastal center program, the Department now is proposing to allow towns that still have not done proper planning to receive extensions. The Department uses the justification that towns have committed sufficient resources to trying to receive plan endorsement, but in actuality, the requirement to qualify for an extension is for a town to submit their current planning documents, hold one pre-petition meeting with the State Planning Commission, and commit to plan endorsement. There is no evidence of previously committed resources-all towns need to do is send a letter, not do any planning and still can receive permits to sprawl all over the coast. (17)

RESPONSE TO COMMENTS 22 AND 23: While the level of time and investment varied for the 11 municipalities that initiated plan endorsement, each municipality has allocated resources toward the effort and committed to continue their involvement in the process. Further, the Department has determined that the re-establishing coastal centers for a limited period and under certain circumstances is an appropriate means to encourage continued municipal involvement in the plan endorsement process and the comprehensive municipal and regional planning it entails. The Department determined that a pre-petition meeting was an appropriate milestone to signify commitment of time and resources to the process. Further to ensure that the municipalities continue active engagement in and completion of the process, milestones were added. Failure to meet the established milestone results in expiration of the re-established coastal center.

24. COMMENT: The rules do not address the appropriateness of the resulting levels of growth authorized under the mainland coastal centers, through the application of the impervious coverage limits. The statutory directives of CAFRA and various provisions of the Coastal Zone Management rules require that cumulative and secondary, as well as regional impacts of development, be assessed and strict burdens be met before the Department may issue a CAFRA permit (e.g. N.J.S.A. 13:19-10, N.J.A.C. 7:7E-6). These obligations extend to other actions or decisions by the Department, in accordance with N.J.A.C. 7:7E-1.2(b) which establishes the jurisdiction of the chapter.

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The rule articulates a process coordinated with the Plan Endorsement procedures of the State Planning Commission, identifying this coordination as “a necessary prerequisite to establishing a CAFRA center, in accordance with N.J.A.C. 7:7E-5B.3, the coastal center expires or is superceded by a CAFRA center.” However, the rule does not clearly outline the process for assessing endorsed plans against CAFRA and the Coastal Zone Management rules. While the boundary review under N.J.A.C. 7:7E-5B.3 is benchmarked against determining whether it is consistent with the purposes of CAFRA and the Coastal Zone Management rules and rejection is based on a finding that the State Planning Commission boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment or would otherwise be clearly inconsistent with the purposes of CAFRA or the Coastal Zone Management rules, it should be clarified within the rule how the overall growth level and capacity of the center would be assessed during the Department’s review of plan endorsement petition or upon submission for full CAFRA center designation.

Further, while it is recognized that this rule is in essence another “temporary” extension of the coastal centers pending completion of Plan Endorsement and submission for full CAFRA designation, or expiration on either March 2006 or March 2007, the Department is not relieved of its obligation to make findings required by the CAFRA statute and Coastal Zone Management rules at N.J.A.C. 7:7E-5B.3. The rule should clarify how compliance with CAFRA and the Coastal Zone Management rules will be assessed prior to CAFRA center designation. (2, 4, 7)

**RESPONSE:** In accordance with the statutory mandate and Coastal Zone Management rules, the Department shall not grant a CAFRA permit unless it meets all of the pertinent CAFRA findings as well as the rules protecting sensitive resources of the coastal environment such as threatened and endangered species, wetlands and coastal waters.

With the Office of Smart Growth and local governments, the Department engages in a continuing planning process which considers impacts on coastal resources and demands on water supply and wastewater treatment. The Department is evaluating the Coastal

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Zone Management rules to determine where changes may be appropriate to acknowledge the Plan Endorsement process.

25. COMMENT: The proposal contains requirements for re-establishing the expired centers at N.J.A.C. 7:7E-5B.6. Unfortunately, the timeframes specified in the proposal will severely limit, if not preclude, the ability of municipalities to meet the requirements. To have a center re-established, a municipality would have to have had a pre-petition meeting with the Office of Smart Growth prior to the publication of the rule proposal (July 5, 2005), or within one month of the rule proposal (August 4, 2005). Thus municipalities are being required to have had a meeting either before they were told such a meeting was necessary, or within one month of being made aware that this requirement was being considered. The proposed rules require that the pre-application meeting request be in the form of a resolution from the town's governing body. It is not likely many if any municipalities would have been able to read this proposal, convene a meeting, approve the resolution and submit it to the Office of Smart Growth within such a short time frame, prior to the adoption of the proposal. The time frame established at N.J.A.C. 7:7E-5B.6(b)2i should be extended to six months from the date of the adoption of the rule proposal. This will give the municipalities time to determine if there is a need or desire to re-establish the center and then to get the resolution approved.

The proposal lacks any incentives for development in the coastal centers and in fact will serve to limit the number and developability of the centers. There are retroactive deadlines for requesting meetings necessary for re-establishment of the centers. The proposal is inconsistent with New Jersey's stated policies of encouraging growth in designated growth areas. The Department should work with the Office of Smart Growth and the municipalities on plan endorsement. Towns that choose not to proceed with this process must make their intentions known, and a five-year time frame should be established for any projects underway to complete the permitting and approval process.

(19)

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RESPONSE: The Department does not believe that the time frame for municipalities to work through the State planning process is too short. Of the 37 municipalities with coastal centers located on the mainland that expired on February 7, 2005, 23 municipalities have initiated the plan endorsement process. Since July 5, 2005, 12 municipalities have submitted resolutions to the Office of Smart Growth requesting a pre-petition meeting in accordance with N.J.A.C. 7:7E-5B.6(b)2i. Further, in accordance with N.J.A.C. 7:7E-5B.6(b)2ii, these 12 municipalities have held a pre-petition meeting with the Office of Smart Growth prior to October 15, 2005.

26. COMMENT: The coastal centers located on the mainland were chosen because they had been included in the State Development and Redevelopment Plan and thus identified as places where growth should go. The State Planning Commission is currently conducting cross-acceptance which will lead to a revised State Plan based on input from the municipalities. This planning process is the tool by which the State determines where future growth should go. The coastal centers should be those identified through this process. These identified centers will be subject to Department review through the cross-acceptance process. (19)

RESPONSE: The coastal centers adopted in February 2000 were a subset of those identified in the 1992 State Plan and those identified by municipalities pursuant to a public notice published in December 1998 (See 30 N.J.R. 4283(b)). Based on this information, the Department compiled a list of these proposed centers and delineated coastal center boundaries for each one where appropriate. In adopting the coastal centers, the Department indicated that these centers were an interim measure to accommodate planned or imminent development until the municipalities containing the mainland coastal center had been given the opportunity to obtain center designation through the State Planning process. The coastal centers were only intended to be an interim measure and therefore were limited in term. Neither cross-acceptance nor the reestablishment of

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the coastal centers is a substitute for the plan endorsement process which provides the comprehensive planning necessary to protect coastal resources. Therefore, should a

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municipality in the CAFRA area wish to have a CAFRA center established, they must participate in the State Planning Commission's plan endorsement process.

27. COMMENT: Was traffic considered when delineating the coastal centers? A lot of the coastal centers are located along the Route 9 corridor or other similar small roads. Allowing dense development at 80 percent impervious cover is having an impact on these small towns. There has been no planning for traffic, water supply or other infrastructure. (4)

RESPONSE: As noted above, the coastal centers adopted in February 2000 were a subset of those identified in the 1992 State Plan and those identified by municipalities in response to a December 1998 public notice. Based on this information, the Department compiled a list of these proposed centers and delineated coastal center boundaries for each one where appropriate.

Traffic is addressed by various parts of our rules for all parts of the coastal area, as discussed in more detail in response to Comment 28. Further, traffic impacts on a local and regional level are more thoroughly considered in the comprehensive State Planning process of plan endorsement.

28. COMMENT: Permitting the coastal centers to be extended will create additional pressures on the human environment in the area of traffic congestion and quality of life. Increased development will lead to increased traffic congestion which makes living in the area less desirable and impacts tourism. We are placing an increasing number of motor vehicles in close proximity to our waters and food supply. By permitting the extension of the coastal centers located on the mainland, municipalities will not reap benefits, but will instead, be burdened by traffic congestion. Increased traffic will also harm the tourism industry and will result in a reduction in tax revenue; revenue which the State can not afford to lose. (15)

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RESPONSE: The impacts of a proposed development on traffic are addressed in various ways. The Department's Coastal Zone Management rules address traffic impacts. Specific rules addressing traffic include, Secondary impacts rule, N.J.A.C. 7:7E-6.3, Stormwater Management rule, N.J.A.C. 7:7E-8.7 and Traffic rule, N.J.A.C. 7:7E-8.14. The Secondary impacts rule requires an analysis of the likely geographic extent of induced development, its relationship to the State Development and Redevelopment Plan, and an assessment of likely induced point and non-point air and water quality impacts, and evaluation of the induced development in terms of all applicable Coastal Zone Management rules. The Stormwater rule, N.J.A.C. 7:7E-8.7, through the Stormwater management rule at N.J.A.C. 7:8, requires that proposed developments address runoff quantity and quality. The Traffic rule, N.J.A.C. 7:7E-8.14, requires that coastal development be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

The State Development and Redevelopment Plan also addresses transportation, including traffic. The State Plan's Statewide Policy 8, Transportation, is intended to improve transportation systems by coordinating transportation and land-use planning, integrating transportation systems; developing and enhancing alternative modes of transportation; improving management structures and techniques; and utilizing transportation as an economic development tool. As part of the comprehensive planning process of plan endorsement, impacts to transportation are addressed on both a local and regional level.

29. COMMENT: The commenter supports the Department's efforts to provide relief to Middle Township, Cape May County in acknowledgement of the Township's efforts to satisfy the State Planning Commission's current requirements for plan endorsement and, previous requirements for center designation. N.J.A.C. 7:7E-5B.6(b) provides that the centers set forth in Appendix 2 are reinstated if the municipality held a pre-petition meeting with the Office of Smart Growth prior to July 5, 2005. It is the commenter's understanding that Middle Township held such a meeting prior to July 5, 2005. In the interests of full disclosure and complete understanding of the adopted

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regulations, the commenter requests that the Department confirm as part of the rule making process that Middle Township has satisfied this requirement. It is the commenters' understanding that Middle Township need not satisfy the requirements of N.J.A.C. 7:7E-5B.6(b)2, and that, upon adoption of the amendments and new rules, the Cape May Court House Coastal Regional Center will expire either: (1) on March 15, 2006 if Middle Township has not obtained a determination from the Executive Director of the Office of Smart Growth that its initial petition for plan endorsement is complete, or (2) March 15, 2007. Presumably, the center will continue beyond that date if approved by the State Planning Commission and the Department pursuant to the CAFRA center designation process. (10, 11)

RESPONSE: Since Middle Township has coastal centers that expired on February 7, 2005 and the municipality held a pre-petition meeting with the Office of Smart Growth on October 23, 2004, the seven coastal centers located within Middle Township are re-established herein, in accordance with N.J.A.C. 7:7E-5B.6(b)1. These coastal centers remain in effect only if Middle Township continues to progress through the plan endorsement process. To demonstrate continuing progress, in accordance with N.J.A.C. 7:7E-5B.6(c)1, prior to March 15, 2006, Middle Township must obtain a determination from the Executive Director of the Office of Smart Growth that the petition for initial plan endorsement is complete or the coastal center boundaries shall expire. Should Middle Township's petition for initial plan endorsement be deemed complete as described above, the coastal center boundaries within the municipality will remain in effect until the coastal center becomes a CAFRA center or until March 15, 2007, whichever is earlier.

30. COMMENT: The commenter operates a thousand acre peach orchard outside of Bridgeton City in Cumberland County. The entire farm is located within the CAFRA area, a small portion of which is located within the Coastal Suburban Planning Area. The Department in its agricultural impact analysis indicates that the proposal is not expected

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to impact the agricultural industry, that CAFRA saves farmland and therefore it will help the agriculture industry. That part is true, land is needed to farm.

However, capital is also needed to farm. It is the nature of most agriculture to incur the majority of expenses prior to harvesting the crop. In order to borrow money to support the farm, a mortgage or line of credit is usually needed. In most cases the only asset a farmer has is their land. Lending institutions are becoming more aware of municipal and State regulations and the limitations they are putting on development of land. As such, lending institutions are less likely to accept the land as collateral. The value these institutions put on the land is based on multiple uses, the more limitations, the less the value of the land. CAFRA is having an economic impact on agriculture in this regard. (4)

RESPONSE: The Agricultural impact statement reflects impacts for this proposal, not the Coastal Zone Management rules in their entirety. The proposal to temporarily re-establish coastal centers is not anticipated to have an impact on agriculture.

The commenter's municipality, Hopewell Township, is currently engaged in the Plan Endorsement process with the State Planning Commission and State agencies to determine appropriate areas in the Township for center-based growth, and areas for agricultural use and resource protection. The Township is also part of the State's Transfer of Development Rights pilot project which would give credits to landowners outside designated growth areas. These credits can be purchased in order to develop inside the designated growth area. The Transfer of Development Rights program, when implemented in Hopewell, can maintain landowner equity in the Township, and commenter is urged to participate in the Township's planning initiative.

31. COMMENT: The commenter suggests and recommends that the State could improve and enhance coastal management and development planning with a greater utilization and implementation of the existing Federal resource management and protection programs already in place.

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A greater focus on these existing Federal programs designed to protect all of the resources in those respective protection areas will not only build off the past Federal planning contributions, but could also promote the utilization of additional Federal resources to accelerate and enhance management plan implementation. (1)

RESPONSE: The Department attempts to utilize existing Federal resource management and protection programs and plans where possible. This is reflected in the Department's Coastal Zone Management rules, N.J.A.C. 7:7E. Two of the special area rules reflect Federal resource management and protection plans; the Pinelands National Reserve and Pinelands Protection Area rule, N.J.A.C. 7:7E-3.44 and the Wild and scenic river corridors rule, N.J.A.C. 7:7E-3.46. The Department worked with the Pinelands Commission and National Parks Service in developing these rules. Should additional Federal plans be adopted within the coastal zone, the Department would consider adding them to New Jersey's Coastal Management Program.

32. COMMENT: The commenter does not support grandfathering projects that applied for a CAFRA permit as set forth at N.J.A.C. 7:7E-5B.6(f). By providing grandfathering for individual projects the Department is merely re-enforcing the failure to compressively plan, not furthering the goals of smart growth or enhancing the environment. (15)

33. COMMENT: N.J.A.C. 7:7E-5B.6 establishes that applications received by the Department prior to February 7, 2005 and assigned a project number would be subject to the regulatory restrictions in place at that time. Thus, these projects are allowed the impervious and vegetative cover limits that were in existence prior to the center's expiration. The proposal notes that this provision was included in recognition of the applicant's investment in the proposed development. This is an arbitrary determination of investment. An applicant whose permit was nearly complete but not submitted prior to February 7, 2005, may in fact have made a greater investment in time and money than an applicant whose application was submitted by that date. The proposal should be

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modified to include an option for applicants with applications that were not submitted prior to February 7, 2005 to show the investment that had been made in the project. The Department should, at a minimum, establish grandfathering criteria relating to private investments made in good faith reliance and expectations of implementation of the State Plan and the precepts of smart growth. (19)

RESPONSE TO COMMENTS 32 AND 33: Project sponsors that were considering future developments in the CAFRA area had five years notice that coastal centers would expire on February 7, 2005. In re-establishing the coastal centers located on the mainland that expired February 7, 2005, the equities of proposed developments weighed in favor of focused relief from the strict limitations on impervious cover limits through a grandfathering provision. Given the long period of notice of coastal center expiration, the Department believes that it is appropriate to grandfather only those projects that actually submitted a CAFRA permit application in an effort to meet this long-established expiration date.

The Department believes that the criteria for re-establishing the coastal centers for a limited period of time will promote implementation of the State Plan and the precepts of smart growth by encouraging municipalities to participate in the comprehensive planning process of plan endorsement. This is illustrated by the fact that 23 of the 37 municipalities with expired coastal centers are engaged in the plan endorsement process.

34. COMMENT: The commenter commends the Department's acknowledgement of the significant expenditure of resources by certain developers for projects within the boundaries of coastal centers. By grandfathering the impervious cover limits and vegetative cover percentages for applications that meet the requirements of N.J.A.C. 7:7E-5B.6(f), the Department will prevent serious inequities to the public and private sectors. However, the commenter notes that the Department's current practice is to deem pending permit applications incomplete since the coastal center boundaries have expired. Thus applications will not be deemed complete until the proposed regulations are adopted. Given the uncertainty of the adoption date of the proposed regulations, and the

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Department's review time for applications, "completeness determinations" may not be made by the March 15, 2006 deadline. The commenter suggests that either the Department issue "completeness determination" conditioned on adoption of the proposed regulations, or revise the deadline for a complete application set forth at N.J.A.C. 7:7E-5B.6(f) from March 15, 2006 to March 15, 2007 to ensure that applicants and the Department have sufficient time to complete pending applications after the proposed regulations are adopted. (6)

RESPONSE: The Department is aware of 11 CAFRA permit applications in expired coastal centers that were received by the Department and assigned an agency file number prior to February 7, 2005. Since the rule was published in July 2005, applicants for these pending CAFRA applications have had notice and the opportunity to address their application deficiencies. Further, as this rule is effective <<insert date of adoption>>, these 11 applicants have two additional months to address their application deficiencies and have their application declared complete for final review in accordance with N.J.A.C. 7:7-4.6. The Department's Land Use Regulation Program will work with these 11 applicants to advise them on what is necessary to meet the March 15, 2006 deadline.

35. COMMENT: The Department is proposing to extend the generous impervious cover and vegetative cover limits for coastal centers to those developments that had submitted an application and fee to the Department by a certain date. There is no requirement that the application meet any environmental standards and the impervious cover density of 80 percent in the coastal centers, is the equivalent of Manhattan Island. (17)

RESPONSE: All CAFRA permit applications must comply with the Coastal Zone Management rules, N.J.A.C. 7:7E. These rules contain the substantive standards for the use and development of resources within the coastal zone. Further, prior to issuing a CAFRA permit, the Department, pursuant to N.J.S.A. 13:19-10 is required to find that the proposed development: conforms with all applicable air, water and radiation emission

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and effluent standards and all applicable water quality criteria and air quality standards; prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region; provides for the collection and disposal of litter, recyclable and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare; would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies; would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region; is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare; and would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes at the site and within the surrounding region.

36. COMMENT: It is the commenter's understanding that the Cape May Court House coastal regional center will be reinstated on a limited basis as it is listed in Appendix 2 as a mainland coastal center with no changes in boundaries. Pursuant to N.J.A.C. 7:7E-5B.6(f), since the CAFRA application was received by the Department prior to February 7, 2005 and received an agency project number, the impervious cover limit of 80 percent is applicable to the commenter's proposed project, a 60 townhouse unit aged restricted senior citizen development, provided the CAFRA permit application is complete for review pursuant to N.J.A.C. 7:7-4.6 prior to March 15, 2006. Moreover, as provided by N.J.A.C. 7:7E-5B.6(f), the environmentally sensitive areas identified at N.J.A.C. 7:7E-5B.6(e)1 through 6 are not considered part of the mainland coastal center except for CAFRA applications received by the Department prior to February 7, 2005 and assigned an agency file number prior to that date. Thus, the clear intent of this regulation is that the proposed project located within the re-established Cape May Court House coastal center may include the 6 environmentally sensitive areas delineated at N.J.A.C. 7:7E-5B.6(e) for the purpose of calculating impervious cover limits. The commenter appreciates the Department's recognition of the equities of their application.

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The commenter requests that as part of the rule making process, the Department confirm the commenter's understanding of the impact of these proposed regulations. (10)

37. COMMENT: It is the commenter's understanding that the Swainton coastal hamlet will be re-established on a limited basis as it is listed in Appendix 2 as a mainland coastal center with no changes in boundaries. Pursuant to N.J.A.C. 7:7E-5B.6(f), since the CAFRA application was received by the Department prior to February 7, 2005 and received an agency project number, the impervious cover limit of 50 percent is applicable to the commenter's proposed project, a Sturdy Savings Bank, provided the CAFRA permit application is complete for review pursuant to N.J.A.C. 7:7-4.6 prior to March 15, 2006. Moreover, as provided by N.J.A.C. 7:7E-5B.6(f), the environmentally sensitive areas identified at N.J.A.C. 7:7E-5B.6(e)1 through 6 are not considered part of the mainland coastal center except for CAFRA applications received by the Department prior to February 7, 2005 and assigned an agency file number. Thus, the clear intent of this regulation is that the proposed project located within the re-established Swainton coastal center may include the 6 environmentally sensitive areas delineated at N.J.A.C. 7:7E-5B.6(e) for the purpose of calculating impervious cover limits. The commenter appreciates the Department's recognition of the equities of their application. The commenter requests that as part of the rule making process, the Department confirm the commenter's understanding of the impact of these proposed regulations. (11)

RESPONSE: N.J.A.C. 7:7E-5B.6 differentiates between the application of impervious cover limits to a site within the boundaries of a mainland coastal center depending on whether the application was received before or after February 7, 2005. Pursuant to N.J.A.C. 7:7E-5B.6(f), for CAFRA applications received by the Department prior to February 7, 2005 and assigned an agency file number pursuant to N.J.A.C. 7:7-4.4(a)1i or ii, the impervious cover limit for any portion of the site within the mainland coastal center boundary is determined in accordance with N.J.A.C. 7:7E-5B.4(d) in recognition of the applicant's investment in the proposed development. However, the

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applicant must ensure that the application is complete for final review in accordance with N.J.A.C. 7:7-4.6 prior to March 15, 2006 to retain this special recognition.

If the commenter's CAFRA applications were received by the Department prior to February 7, 2005 and assigned an agency file number, the impervious cover limit for any portion of the site within the Cape May Court House coastal regional center is determined in accordance with N.J.A.C. 7:7E-5B.4(d) provided that the application is complete for final review prior to March 15, 2006. The impervious cover limits in N.J.A.C. 7:7E-5B.4(d) are based on net land area, calculated in accordance with N.J.A.C. 7:7E-5B.3, which deduct wetlands and other areas from the calculations. Moreover, this adoption does not modify other Coastal Zone Management rules that apply to the site and may affect the development intensity of the site.

38. COMMENT: The commenter supports the exclusion of the environmentally sensitive areas from the re-established centers. (4)

39. COMMENT: The commenters support the removal of the environmentally sensitive resources defined at N.J.A.C. 7:7E-5B.6(e) from within the definition of mainland coastal centers. This is consistent with the purpose of the coastal centers program, as described in the rule summary:

“These rules [32 N.J.R. 503(a)] were intended to...discourage sprawl development and protect sensitive natural resources.”

The six environmentally sensitive areas described at N.J.A.C. 7:7E-5B.6(e) are protected by both the statutory goals of CAFRA as well as under specific rules contained within the Coastal Zone Management rules. For the purposes of the coastal center boundaries, and their use in defining impervious cover requirements and vegetation cover percentages, consistency with infrastructure and other center-determined policies, it is appropriate to exclude these six environmentally sensitive areas, and consider them as part of the underlying planning area. (2, 4, 7)

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40. COMMENT: The commenters support N.J.A.C. 7:7E-5B.6(g) which require that proposed development must be wholly within the designated center, and outside of the defined environmentally sensitive areas in order for the impervious coverage limits to be determined under the coastal center determined limits in Table H rather than the Coastal Planning Area limits. (2, 4, 7)

41. COMMENT: The application of lower development intensities through lower impervious cover limits for proposed developments that include the six listed environmentally sensitive areas will reduce the overall coastal center growth and will reduce the site development intensity, force avoidance of environmentally sensitive areas and also reduce the intensity of development adjacent to the sensitive areas and along the boundaries of the designated centers.

The rule will reduce the overall growth in the centers given that a high proportion of the lands that remain undeveloped are classified as one of the six environmentally sensitive areas. This is appropriate given the fact that in the original coastal center design, there was no estimation as to the overall impact of the size or intensity of development that was allowed within these centers. (4,7)

RESPONSE: The Department acknowledges these comments in support of the rule.

42. COMMENT: Some critical resources and resource areas protected under CAFRA, or essential to meeting CAFRA's goals, are not included in N.J.A.C. 7:7E-5B.6(e). Farmland conservation areas should be added to N.J.A.C. 7:7E-5B.6(e).

The Coastal Zone Management rules at N.J.A.C. 7:7E-3.33 define farmland conservation areas as any contiguous 20 acres or more of land with certain high quality soils which were actively farmed or suitable for farming. In these areas, farming and open space uses are protected. The Department should add farmland conservation areas to N.J.A.C. 7:7E-5B.6(e)3. Exclusion of farmland conservation areas from the definition of mainland coastal centers would support and advance N.J.A.C. 7:7E-3.33, the farmland

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conservation goals of the State Plan and would be consistent with the goals of the coastal center program. (2, 4, 7)

RESPONSE: The Coastal rural planning area generally contains most of the CAFRA area's remaining prime agricultural land as well as large contiguous tracts of forested areas and other open lands. The Coastal Planning Area is interspersed with centers and with scattered commercial, industrial and low-density residential development. One of the policy objectives for this Coastal Planning Area is to protect and enhance the rural character and agricultural viability of the planning area by guiding growth into centers. As a result of these adopted amendments, some coastal centers will be re-established within the Coastal Rural Planning Area. These centers are classified as either coastal villages or coastal hamlets with an impervious cover limit of 50 or 60 percent, respectively. According to the State Plan, villages are compact, primarily residential communities that offer basic consumer services for their residents and nearby residents. Hamlets are the smallest type of center and are found in primarily rural areas, often at crossroads. Although primarily residential in character, they may have a small compact core. The Department believes it appropriate to have centers located within the Coastal Rural Planning Area and to concentrate growth into these area thereby preserving large tracts of agricultural land.

43. COMMENT: Some critical resources and resource areas protected under CAFRA, or essential to meeting CAFRA's goals, are not included in N.J.A.C. 7:7E-5B.6(e). The following resource area should be added to N.J.A.C. 7:7E-5B.6(e): Federally designated Wild and Scenic Rivers (Great Egg Harbor River and Maurice River).

The Wild and scenic river corridors rule at N.J.A.C. 7:7E-3.46, establishes the Department's rules governing CAFRA related development within these areas. This rule requires that development within the wild and scenic river corridor be in compliance with specific standards established within the Federal River Management Plan. Therefore, the Department should include Wild and scenic Rivers within the list of environmentally

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sensitive areas excluded from the coastal center as set forth at N.J.A.C. 7:7E-5B.6(e).

This will maintain the Federal River Management Plan as the controlling regulations for development within these areas. (2, 4, 7)

44. COMMENT: For the reasons discussed in Comment 1, the following underlined language should be added to N.J.A.C. 7:7E-5B.6(e)3.

“Land that is owned by Federal, State, county or municipal agencies or conservation organizations and dedicated to recreation, conservation of natural resources, wildlife protection, wildlife management, or Wild and Scenic River Corridors as specified at N.J.A.C. 7:7E-3.46 and 7:7E-5B.3(b). (1, 4, 12, 16)

RESPONSE TO COMMENT 43 AND 44: As stated in response to Comment 1, the Department agrees that all levels of government need to protect wild and scenic waterways and ensure that any development is compatible with the River Management Plans.

The Coastal Zone Management rule’s Wild and scenic river corridors rule at N.J.A.C. 7:7E-3.46(b)2 requires development to comply with the standards set forth in the Federal River Management Plan adopted pursuant to the National Wild and Scenic Rivers Act for the wild and scenic river corridor, if one exists. Both the Comprehensive Management Plan and Environmental Impact Statement for the Great Egg Harbor National Scenic and Recreational River (May 2000) and the Comprehensive Management Plan and Environmental Impact Statement for the Maurice National Scenic and Recreational River (January 2001) are Federally approved River Management Plans. The Department believes that development intensity within the wild and scenic river corridors of these rivers is best addressed through the approved Federal River Management Plans.

45. COMMENT: The proposed rule clearly intends to exclude environmentally sensitive areas from the growth policies embodied in the center designations made by the State Planning Commission. This policy objective could be clarified by including the areas and resources identified at N.J.A.C. 7:7E-5B.6(e) within the list of “special areas”

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in N.J.A.C. 7:7E-5.3(d) that are excluded from the calculation of net land area on a site available for the purposes of determining impervious cover allowed. (2, 4, 7)

RESPONSE: The proposed rule does not address center designations made by the State Planning Commission. It addresses coastal centers established by the Department. Because comprehensive planning was not done to establish these coastal centers, they are limited in duration and exclude the six environmentally sensitive areas listed at N.J.A.C. 7:7E-5B.6(e) without any further evaluation. The Department is actively participating in the plan endorsement process and through that process, evaluating environmentally sensitive areas in a regional context. The Department will evaluate new or changed planning areas or center boundaries approved by the State Planning Commission to determine whether they are acceptable for CAFRA permitting purposes and sufficiently protective of environmentally sensitive areas. Wetlands are already excluded from the net land area. Based on the above, the Department does not believe it is appropriate to exclude the other five environmentally sensitive areas from the net land area.

46. COMMENT: The commenters support the identification and inclusion of “critical environmental sites” within CAFRA and the protection afforded them under the rules. However, there has been significant information developed by the Department since 2001 as part of its participation in the development of the recent State Development and Redevelopment Plan for cross-acceptance; this information should be utilized by the Department to assess and modify the Coastal Critical Environmental sites, and/or their boundaries, where necessary to advance the purposes of CAFRA. This may be necessary at the conclusion of cross-acceptance, when any boundary revisions to Planning Areas, newly created centers or critical environmental sites as a result of cross acceptance are reviewed by the Department pursuant to N.J.A.C. 7:7E-5B.3(b). (2, 4, 7)

RESPONSE: The Department agrees that any Critical Environmental Site identified through the Cross-Acceptance process should be evaluated for the purposes of CAFRA. As such, the Department established a process at N.J.A.C. 7:7E-5B.6(h) for reviewing

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new or modifying Coastal Critical Environmental Site boundaries. This process ensures that the boundaries used for CAFRA implementation reflect consistency with the purposes of CAFRA. Moreover, the Department will consider the appropriate boundaries of environmentally sensitive areas, including the Critical Environmental Sites, as it works with municipalities and the Office of Smart Growth in the plan endorsement process.

47. COMMENT: The proposal restricts the coastal centers at N.J.A.C. 7:7E-5B.6 where there are six areas that are to be excluded from any mainland coastal center. These “areas” are referred to as environmentally sensitive and include endangered or threatened wildlife species habitat, Natural Heritage Program priority sites, certain government or conservation organization owned lands, special water resource protection areas, wetlands and coastal critical environmental sites. N.J.A.C. 7:7E-5B.6(g)2 states that if any portion of the development is located in one of these areas the center impervious cover limits will no longer be applicable to any part of the site. As the Department currently regulates development activities in any of these “areas” it is difficult to understand why this provision is necessary. Since the Department’s other regulatory programs will provide the necessary environmental safeguards for these areas, why is the restriction on development being imposed?

The Department continues to add layers of restrictions on what are supposed to be growth areas while publicly taking the position that there is a need to encourage development in these areas. This additional layer of protection is unnecessary, as there are regulatory programs in place that will serve to protect these areas. This additional layer of restriction is both unnecessary and contrary to the concept of the coastal center. This provision is redundant and confusing and therefore should be deleted. (19)

RESPONSE: As stated previously, the coastal centers delineated and adopted by the Department in 2000 were not the result of a comprehensive planning process. The coastal centers were intended to facilitate planned and imminent growth until the municipality could complete the State Planning process. For similar reasons, the Department has re-established certain coastal centers under this rule. Therefore, the

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Department has limited the duration of a re-established coastal center and excluded certain environmental sensitive areas in recognition that the comprehensive planning through the plan endorsement process has not yet been completed.

48. COMMENT: This proposal allows for the continuation of poor planning and lack of regard for environmental resources by providing ample time for municipalities to extend their coastal boundaries, albeit without some of the critical resources such as wetlands, open space, and special water resource protection areas. These areas as delineated in N.J.A.C. 7:7E-5B.6(e) should always be excluded from coastal centers especially when water quality has been and continues to be degraded. (16)

RESPONSE: The areas identified at N.J.A.C. 7:7E-5B.6(e) will be excluded from coastal centers until they expire. These areas will be addressed through the plan endorsement process and the Department's review of centers approved by the State Planning Commission prior to their acceptance as CAFRA centers.

49. COMMENT: The new rules should incorporate environmental safeguards to protect recharge areas for groundwater supply. The Coastal Zone Management rules for General Water areas already require development in the CAFRA area to protect special water areas, such as aquifer recharge areas, by stating that certain activities are to have no adverse impact on groundwater resources. Therefore, recharge areas for groundwater supply should be included as an environmentally sensitive area that is excluded from the coastal center boundary. This is necessary since the current system is not protecting critical water supply areas as depletion of the aquifers continues to occur. (16)

50. COMMENT: Some critical resources and resource areas protected under CAFRA, or essential to meeting CAFRA's goals, are not included in N.J.A.C. 7:7E-5B.6(e). Well head protection areas and other areas necessary to protect water supply should be added to N.J.A.C. 7:7E-5B.6(e). N.J.S.A. 13:19-10d states that a permit may be issued pursuant to this act only upon a finding that the proposed development "would

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result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.” It is doubtful that “minimal feasible impairment” can be achieved through assigning high intensity, growth oriented mainland coastal center designations to these areas. Given this clear direction from the Legislature regarding CAFRA’s requirements, the Department should include well head protection areas and other areas necessary to protect water supply in the proposed listing of areas excluded from the mainland coastal centers. (2, 4, 7)

RESPONSE TO COMMENT 49 AND 50: The Department agrees that there is a need to protect wellheads and water supply. State and local agencies, as well as the regulated community, have made significant strides over the last 30 years to protect the quality of our water resources and the ecosystems that rely on them. Major water quality improvements have been made as a result of water quality and drinking water standards and programs (both regulatory and non-regulatory) designed to ensure standards are met. Recent measures to control non-point sources have expanded the Department’s water quality protection programs by recognizing the link between land use change and water resource impacts. In addition, the Department’s Safe Drinking Water Program is designed to ensure that water delivered for human consumption meets drinking water standards.

New Jersey’s drinking water meets Federal and State standards 99 percent of the time when sampled as a result of local and State programs. Despite this success, the Department recognizes the importance of using new information such as that from the source water assessment reports, which were required as part of the 1996 amendments to the Safe Drinking Water Act, to evaluate the need for additional protection measures for safe drinking water sources. The Department is currently reviewing the source water assessment information to identify any additional source water protection measures necessary to protect our water supply. Further, on October 4, 2004, the Department published in the New Jersey Register a notice that sought public comment on certain topics related to the Groundwater Quality Standards (see 36 N.J.R. 4400(a)). One of the topics the Department sought comments on was whether it is necessary to provide

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additional protections to areas mapped as Well Head Protection Areas. The Department is currently reviewing comments received in response to this notice and is considering amendments to the Groundwater Quality Standards that would provide additional protection to Well Head Protection Areas.

Because the re-establishment of the coastal centers is only for a limited time, the Department has not required water resource protection measures in this rule proposal. However, through the Plan Endorsement process, the Department is requiring coastal municipalities to prepare a water infrastructure plan. This plan includes various analyses of the capacity of existing public sewer and water infrastructure using different scenarios. The aim of the water infrastructure planning process is to get municipalities to restore, maintain and enhance water and water related resources by: restoring the quality of surface and ground waters to meet surface and ground water standards, and to protect existing, designated or desired uses of the waters; and ensure adequate quantity of surface and ground waters to meet current and future ecological and water supply needs. In addition, as part of the Planning and Implementation Agreement entered into by the a municipality and the State Planning Commission at the time of the approval of the petition of initial plan endorsement, municipalities are required to develop wellhead protection area and stream corridor plans and implementing ordinances to ensure water and ground water resources are protected.

51. COMMENT: The commenter states that not only the Department, but the State Planning Commission and other local, State and Federal agencies need to more proactively recognize and include the Federal designation of the Great Egg Harbor and Maurice Rivers into State planning and State rules. These two rivers and their tributaries have been part of a Federal management program in New Jersey for over 10 years, and in fact have “outstanding resource values” with not only State, but national and international recognition and need for protection.

N.J.A.C. 7:7E-3.46, Wild and Scenic River Corridors, recognizes, details and supports the management and protection of these outstanding resource values. Specifically, N.J.A.C. 7:7E-3.46(b)2 requires compliance with development standards as

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set forth in the Federal River Management Plan. Using available Geographic Information System data, the commenter has determined that there are 6 coastal centers on the Great Egg Harbor River with boundaries that overlap the designated wild and scenic river corridor as set forth at N.J.A.C. 7:7E-3.46(a). These coastal centers include: Tuckahoe coastal hamlet, Petersburg coastal village, Corbin City expired coastal hamlet, Egg Harbor expired coastal town, Clarkstown expired coastal hamlet, and Belcoville expired coastal village.

The commenter expresses their desire to work more closely with the Department and Office of Smart Growth to protect and preserve the historic, scenic, recreational and environmental values for which the Great Egg Harbor and Maurice Rivers achieved Federal designation. (1)

RESPONSE: The Department agrees that all levels of government need to protect wild and scenic waterways and ensure that any development is compatible with river management plans. Pursuant to N.J.A.C. 7:7E-5B.6(b), two of the six expired coastal centers identified by the commenter as being located within wild and scenic river corridors are re-established under this rule. These are the Tuckahoe coastal hamlet and the Petersburg coastal village. The Tuckahoe coastal hamlet consists of approximately 123 acres, 72 which are developed and 50 acres which are one of the six environmentally sensitive areas listed at N.J.A.C. 7:7E-5B.6(e). The Petersburg coastal village consists of approximately 447 acres of which 168 are developed and 157 constrained by at least one of the six environmentally sensitive areas listed at N.J.A.C. 7:7E-5B.6(e). Through the Plan Endorsement process, State agencies, including the Department, seek to encourage compact center-based development. Tuckahoe and Petersburg are identified as a hamlet and a village, respectively. Meetings to date with Upper Township indicate that their municipal plans seek to allow only infill development in these centers that is compatible with the scale and existing character of the settlements. The Department concurs with this vision, and will seek to ensure that the scale of these centers is limited to this. Through the Plan Endorsement process, the Department will also strongly encourage municipalities to restrict intense or incompatible development along these river corridors

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as well as implement measures to protect critical habitat and water resources. The Department shares the vision of those that seek to protect our wild and scenic rivers, and welcomes the participation of the public and interested parties in the Plan Endorsement process.

52. COMMENT: Cornerstone Commons Urban Renewal is a proposed 132 unit affordable senior community in Dover Township, Ocean County. This facility is designed to serve low income senior citizens, including the frail elderly with incomes ranging from only 30% to 50% of Ocean County's mean income. Accordingly, this development has been a crucial part of Dover Township's Plan and Re-Petition for Substantive Certification to COAH since December 2001.

Initial planning reviews for the proposed development commenced with Dover Township's Council, Planners and Mount Laurel Subcommittee for six months in 2001. Based on criteria developed at these meetings, the designated site had been designed and then rezoned in accordance with a "Developers Agreement" which the developer and Township entered into on January 4, 2002. In addition to specifying design, development and affordability criteria for this proposed community, it was also ascertained that the designated property was "available, developable, approvable and suitable for such affordable development" as defined by COAH regulations. The subdivision had been designed and engineered in accordance with the existing CAFRA guidelines and with planning and design requirements of the "developer's Agreement" and municipal and State subdivision requirements. The site received a Resolution of Approval for a Major Site Plan, Preliminary and Final Plat on June 3, 2003.

The property is in a "smart growth" area and during the initial six months of planning with the Township, the site was positioned demographically and strategically to meet the local and regional needs of Dover Township's low income seniors. The property is also served by public water and sewer and is being designed with "Green Communities Criteria" to help promote public health, energy conservation, operational savings and sustainable building practices in affordable housing.

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Dover Township and the developer have invested over \$1, 670,000 in the Predevelopment and Acquisition Phase of this development and additional funding commitments and grants have been obtained.

Despite having all other approvals, a CAFRA permit was not submitted prior to February 7, 2005, and therefore the rule provides that if any development is proposed within one of the six environmentally sensitive areas that the impervious cover limits of the re-established coastal center would not apply to any portion of the site. Does the rule prohibit any development on areas that are outside wetland and wetland buffers? (8)

RESPONSE: The rule does not prohibit development within wetlands, wetlands buffers, or any of the five other environmentally sensitive areas listed at N.J.A.C. 7:7E-5B.6(e), nor does it prohibit any development on areas that are outside wetland and wetland buffers. A development must comply with other applicable rules protecting these resources. However, in order to further protect coastal resources, N.J.A.C. 7:7E-5B.6(g) places additional limitations on CAFRA permit applications for development located within a mainland coastal center. If any portion of a proposed development would be located within one of the six environmentally sensitive features within the mainland coastal center, N.J.A.C. 7:7E-5B.6(g) provides that the impervious cover limits and vegetative cover percentages of the mainland coastal center would not apply to any portion of the site. Instead, the impervious cover limits and vegetative cover requirement for the appropriate Coastal Planning Area would apply.

53. COMMENT: Haven House of St. John (Haven House) is a very low income senior citizen housing project proposed in Lower Township, Cape May County. The profile of a typical resident is a widowed female in her 70s with a fixed income of \$10,000 or less. The proposed project site is within ¼ mile of several other age-restricted housing developments creating a core of similar uses. The site is already disturbed and is a residential infill site since it is surrounded by residential development, is close to services such as public and free transportation, shopping centers, medical offices, houses of worship for several different faiths, and a number of recreational facilities. The

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proposed site plan design minimizes adverse environmental impacts and avoids environmentally sensitive areas. The project has received a funding commitment and as part of this commitment construction must commence by November 6, 2006. A CAFRA permit application for this project was not submitted prior to February 7, 2005.

As a result of the coastal center designation expiring on February 7, 2005, reinvestments in older communities and infill sites effectively came to an immediate stop. For example, the expired coastal center designation requires Haven House to comply with the current CAFRA regulations, which means that Haven House cannot be constructed. Specifically, the current regulations related to impervious cover and vegetative cover percentages create development constraints that effectively make it impossible to construct this needed project.

The commenters support this rule, however given the need that particular US Department of Housing and Urban Development (HUD) Programs are intended to satisfy and the time constraints attendant to their funding, the rule should be modified. The commenter suggests that the rule be modified to entirely exempt low income housing projects that are funded by either HUD Section 202 Supportive Housing Program for the Elderly, or HUD Section 811 Supportive Housing for Persons with Disabilities Program, from the coverage restrictions set forth by the rules. This will enable these critical projects to proceed expeditiously, without the threat that the dire need that they intend to address will not be realized because of circumstances beyond the control of the project developers, such as the timely compliance by municipalities with the procedural and substantive requirements of the rules with the Office of Smart Growth. (13, 18, 20)

54. COMMENT: The Coastal Zone Management rules at N.J.A.C. 7:7E-8.14, set a precedent for the relaxation of development regulations established under CAFRA for senior housing.

Further, the Municipal Land Use Law, N.J.S.A. 40:55D –1 et seq., by and through the concept of “inherently beneficial” use (a doctrine created to deal with a relatively narrow range of development that is universally considered to be of special community value), establishes the policy that municipalities should be favorably disposed toward the

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inclusion of such developments. In this context, a municipal zoning or planning board is legislatively directed to recognize and approve inherently beneficial uses, such as low income, senior housing, public housing, schools, and hospitals. The basic premise is that these uses are deemed so valuable to the surrounding community that municipalities are encouraged, and even directed, to recognize legitimate regional and local needs for these proposed uses. *See for example, Kunzler v. Hoffman*, 48 N.J. 277, 286-287 (1986).

Clearly, low income residential projects such as Haven House, which are funded by HUD Section 202 Supportive Housing Program for the Elderly or the HUD Section 811 Supportive Housing for Persons with Disabilities Program, are an inherently beneficial use.

Further, Haven House is consistent with the Smart Growth policy adopted by New Jersey. Smart growth is widely viewed as encouraging development that mixes residential, commercial and industrial land uses, provides various methods of transportation within a development, and increases housing density as a means of protecting open space, all of which, as outlined, are accomplished by the proposed Haven House project.

Despite the growth of home ownership over the past several years, there is still a critical need for affordable senior housing in New Jersey. Without question, providing adequate affordable housing for seniors in areas with existing development and infrastructure, which result in the reduction of the negative effects of sprawl and which protect sensitive natural resources, is key to implementing the principles of smart growth. (13, 20)

55. COMMENT: The Department has failed to acknowledge the extent of existing planned development in many coastal center areas that may expire prior to completion of the State planning process. The resulting limitations on impervious coverage in such developed areas may substantially affect Dover Township's and many other coastal communities' ability to address their low and moderate income housing obligations, which are planned for such suitable areas. The expiration of coastal centers significantly reduces the number of sites suitable for the development of affordable housing. For

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Dover Township, such limitations may threaten the ability to develop an affordable housing plan that will gain certification from the Council on Affordable Housing (“COAH”). With COAH’s Round 3 rules now in effect and their requirement for the submittal of a Fair Share Plan by December 2005, this issue is particularly critical for Dover Township, as presumably is the case for many other communities.

Dover Township is in the “Extended Substantive Certification” phase of the COAH process, with its Affordable Housing petition pending before COAH since October 2004. The entire Township is located within the CAFRA area. The most intensely developed central core of the Township is located within the Toms River coastal regional center, which is listed in Appendix 2 of the rule.

Two of the properties represented in Dover Township’s affordable housing petition, representing approximately 20 percent of the Township’s total affordable housing obligation, may be adversely impacted by the proposed regulations inasmuch as these parcels contain environmentally sensitive areas, the presence of which may subject the developments to lower impervious cover limits than expected at the time the developments were planned in accordance with the prior rules. One of these developments will cater to housing for frail elderly residents, and has received endorsement from the State for the planned utilization of “green construction” techniques. This development has received preliminary and final site plan approvals and is an important part of the Township’s Affordable Housing Plan. As evidence of the site’s importance to the Plan, the Township has borne costs in excess of \$1,000,000 in order to keep the site an integral and viable part thereof. If the development is not permitted, the Township will be severely prejudiced and its efforts to meet its affordable housing obligations crippled, perhaps even scuttled. The other development, on a site directly contiguous to the above described site for elderly housing, is slated to provide 24 housing units for developmentally disabled adults. (5, 9)

RESPONSE TO COMMENTS 53 THROUGH 55: The Department agrees that there is a need for affordable housing in New Jersey. However, it is important that the need for affordable housing be balanced with protection of coastal resources. In recognition of

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the importance of affordable housing to the citizens of New Jersey, the Department intends to propose and seek comment on amendments to the Coastal Zone Management rules this spring relaxing the impervious cover limits and vegetative cover percentages for proposed developments consisting of 100 percent affordable housing in limited circumstances.

56. COMMENT: N.J.A.C. 7:7E-5B.6(e) could be interpreted to mean that the mere presence on a property of one of the six environmentally sensitive areas would cause the property to be excluded as part of the mainland coastal center and would therefore subject the development to the lower impervious coverage limits.

N.J.A.C. 7:7E-5B.6(e) could also be interpreted to mean that the entire property would not be considered part of the mainland coastal center if the development would impact an environmentally sensitive area on the property.

If it is the Department's intent to exclude a property from the mainland coastal center if a development will impact an environmentally sensitive area, this new limitation could significantly reduce the developable areas of a property. The existing regulatory framework for protecting environmentally sensitive areas, such as the Stormwater Management rules, N.J.A.C. 7:8, the Surface Water Quality Standards at N.J.A.C. 7:9B, and the Coastal Zone Management rules at N.J.A.C. 7:7E-3.27 are more than adequate to protect these valuable resources.

The commenter suggests that the Department delete the first sentence of N.J.A.C. 7:7E-5B.6(e) and replace it with the following:

“The areas identified at (e)1-6 below shall be considered part of a mainland coastal center.”

The commenter commends the Department's recognition of the efforts some local governments have made to obtain plan endorsement from the State Planning Commission. However, the limited extension of interim boundaries of coastal centers or the re-established boundaries of coastal centers until March 15, 2006 or March 15, 2007 is too short a time frame for municipalities to work through the State Planning process. The extension should be lengthened until March 15, 2010.

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The Department should consider the inequity of imposing these significant impervious cover limits on developments that have received municipal approvals and inclusion in a municipality's Master Plan and COAH petition. As an alternative to the above language, the commenter proposes that developments within coastal centers which received all municipal approvals prior to the expiration of the coastal center boundaries on February 7, 2005, be granted the same consideration as development that submitted a CAFRA application prior to the February 7, 2005 expiration of the coastal centers. The commenter proposed a new N.J.A.C. 7:7E-5B.6(i) be added to the rule which would state:

“For the purposes of any CAFRA permit application that was received by the Department after February 7, 2005 for a development that received preliminary and final site plan approvals prior to February 7, 2005, the impervious cover limits and vegetative cover percentages shall be determined in accordance with N.J.A.C. 7:7E-5B.4(d) and 5B.5 respectively, so long as the development is included in a municipality's COAH petition.”

For these same reasons, the following underlined language should be added to the second sentence of the first paragraph of Appendix 2:”

“The areas identified at N.J.A.C. 7:7E-5B.6(e) shall not be considered part of a mainland coastal center, except for the purposes of N.J.A.C. 7:7E-5B.6(f) and (i).”  
(9)

RESPONSE: As stated in response to Comment 52 above, in order to further protect coastal resources, N.J.A.C. 7:7E-5B.6(g) places additional limitations on CAFRA permit applications for development located within a mainland coastal center. In accordance with N.J.A.C. 7:7E-5B.6(g)2, if any portion of a proposed development would be located within one of the six environmentally sensitive features within the mainland coastal center, N.J.A.C. 7:7E-5B.6(g) provides that the impervious cover limits and vegetative cover percentages of the mainland coastal center would not apply to any portion of the site. Instead, the impervious cover limits and vegetative cover requirement for the appropriate Coastal Planning Area applies. The rule does not provide that the

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mere presence on a property of one of the six environmentally sensitive areas would cause the property to be excluded from application of the impervious cover limit of the mainland coastal center.

As indicated in response to comments 53 to 55, the Department anticipates proposing in the near future amendments to the Coastal Zone Management rule for CAFRA permit applications that propose a development that is 100 percent affordable housing.

## **Appendix 2, Boundaries of Mainland Coastal Centers in the CAFRA Area**

57. COMMENT: The Schellenger's Landing coastal center should be re-established. Prior to the expiration of the coastal centers in February 2005, the impervious cover limit was 70 percent and now is 5 percent as a result of the expiration of the coastal center. The Schellenger's Landing area is not an undeveloped pristine area, is designated in the Township's Water Quality Management Plan as a sewer service area and is mostly developed. (21)

RESPONSE: To re-establish an expired coastal center boundary, a municipality must have either held a pre-petition meeting with the Office of Smart Growth prior to July 5, 2005 or have completed the process prescribed at N.J.A.C. 7:7E-5B.6(b)2. Since Lower Township did not hold a pre-petition meeting with the Office of Smart Growth prior to July 5, 2005, to re-establish the Schellenger's Landing expired coastal center Lower Township must follow N.J.A.C. 7:7E-5B.6(b)2. In accordance with N.J.A.C. 7:7E-5B.6(b)2i, prior to August 4, 2005 Lower Township submitted a resolution to the Office of Smart Growth requesting a pre-petition meeting. On August 23, 2005, Lower Township held a pre-petition meeting with the Office of Smart Growth as required by N.J.A.C. 7:7E-5B.6(b)2ii. To re-establish the Schellenger's Landing coastal center, Lower Township must have their initial petition for plan endorsement declared complete by the Executive Director of the Office of Smart Growth by March 16, 2006. Should Lower Township receive this determination by March 16, 2006, the Schellenger's Landing expired coastal center boundary would be re-established.

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**Comments** beyond the scope of proposal

58. COMMENT: We must ensure that there is no net loss of wetlands which are important in flood protection, and as filters for run-off and pollution. Maintaining our wetlands benefits all aspects of our environment and economy. If we fill wetlands or degrade them by development, we are causing damages that will reverberate throughout the ecosystem. The commenter provided various statistics on the loss of wetlands in New Jersey per year to support his position that wetlands in New Jersey are in poor condition.

**Summary** of Agency Initiated Changes:

1. **Appendix 2 and Appendix 4:** The Lakewood expired coastal center was deleted from Appendix 4, Expired Coastal Centers, and added to Appendix 2, Boundaries of Mainland Coastal Centers in the CAFRA area. These changes reflect the fact that Lakewood Township held a pre-petition meeting with the Office of Smart Growth on June 28, 2005. Therefore, in accordance with N.J.A.C. 7:7E-5B.6(b)1, the Lakewood coastal center is re-established upon adoption of this rule.

**Federal Standards Analysis**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require that State agencies which adopt, readopt or amend State regulations that exceed Federal standards or requirements include in the rulemaking document a comparison with Federal law.

The Federal Coastal Zone Management Act (16 U.S.C. 1450 et seq.) was signed into law on October 27, 1972. The Federal Act does not set specific regulatory standards for development in the coastal zone; rather, it provides broad guidelines for states developing coastal management programs. These guidelines are found at 15 C.F.R. Part 923. The guidelines do not specifically address the review standards that should be applied to new coastal development in order to preserve and protect coastal resources and to concentrate the pattern of coastal development. They simply provide a planning and management process, without establishing development standards for development in the coastal area.

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Therefore, the Department has concluded that the adopted amendments do not exceed any Federal standards or requirements.

**Full text** of the adopted amendments follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## SUBCHAPTER 5. REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS

### 7:7E-5.2 Definitions

(No change from proposal.)

### 7:7E-5B.3 Boundaries for Coastal Planning Area, CAFRA Centers, CAFRA cores, and CAFRA nodes; Non-mainland coastal centers

(No change from proposal.)

### 7:7E-5B.6 Mainland coastal centers

(No change from proposal.)

## APPENDIX 2

### BOUNDARIES OF MAINLAND COASTAL CENTERS IN THE CAFRA AREA

For purposes of N.J.A.C. 7:7E-5 and 5B, this appendix sets forth the boundaries of mainland coastal centers in the CAFRA area. The areas listed at N.J.A.C. 7:7E-5B.6(e) shall not be considered part of a mainland coastal center, except for the purposes of

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N.J.A.C. 7:7E-5B.6(f). The boundaries of the non-mainland coastal centers are set forth in Appendix 3 and the expired boundaries of coastal centers are set forth in Appendix 4.

In accordance with N.J.A.C. 7:7E-5.3(c), the impervious cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7E-5.3(d). The placement of impervious cover on a site in a coastal center may be further restricted by other provisions of this chapter, including the Special Area rules at N.J.A.C. 7:7E-3.

The Department will update the list of mainland coastal centers in this appendix by notice of administrative change in the New Jersey Register in accordance with N.J.A.C. 7:7E-5B.6(d). The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the mainland coastal centers are listed alphabetically.

Maps of the mainland coastal centers, for illustration only, may be reviewed at the Department, 401 East State Street, Trenton, New Jersey, (609) 292-1143. In case of any discrepancy between the maps and this text, this text shall govern. Note: When a point is described as being a certain distance from a particular street or railroad right-of-way, that distance is measured from the centerline of the right-of-way of such street or railroad. Coastal wetlands maps referenced are listed at N.J.A.C. 7:7-2.2(c) and are available from the Department at the Maps and Publications office, 428 East State Street, PO Box 438, Trenton, New Jersey, (609) 777-1308.

I. – II. (No change from proposal)

III. Ocean County coastal centers

A. (No change from proposal.)

\*B. Lakewood coastal regional center

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1. The coastal regional center boundary extends from the intersection of the Conrail railroad right of way and County Line Road (County route 526), thence east on County Line Road to Brook Road, thence south on Brook Road to Ridge Avenue, thence southwest on Ridge Avenue to Somerset Avenue, thence south on Somerset Avenue to Bergen Avenue, thence west on Bergen Avenue to Linden Avenue, thence south on Linden Avenue to Ocean Avenue (State route 88), thence east on Ocean Avenue (State route 88) to Chambers Bridge Road (County route 549), thence south on Chambers Bridge Road to the Garden State Parkway, thence south on the Garden State Parkway to State route 70, thence west on State route 70 to the Lakewood-Dover Township boundary line, thence northwest along the Lakewood-Dover Township boundary line to the Lakewood-Jackson Township boundary line, thence north along the Lakewood-Jackson Township boundary line to the Conrail railroad right of way, and thence northeast along the Conrail railroad right of way to County Line Road.\*

C. (No change from proposal.)

VI. (No change from proposal.)

### APPENDIX 3

#### BOUNDARIES OF NON-MAINLAND COASTAL CENTERS IN THE CAFRA AREA

(No change from proposal.)

### APPENDIX 4

#### EXPIRED BOUNDARIES OF COASTAL CENTERS

For purposes of N.J.A.C. 7:7E-5 and 5B, this appendix sets forth the boundaries of the coastal centers in the CAFRA area that expired on February 7, 2005 that have not been re-established as mainland coastal centers or which no longer qualify as mainland coastal centers. See N.J.A.C. 7:7E-5B.6.

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The Department will update the list of expired boundaries of coastal centers in this appendix by notice of administrative change as part of the New Jersey Register notice required in N.J.A.C. 7:7E-5B.6(d). The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the coastal centers with expired boundaries are listed alphabetically.

I. – III. (No change from proposal.)

IV. Ocean County expired coastal centers

A. – G. (No change from proposal.)

\*[H. Lakewood expired coastal regional center

1. The expired coastal regional center boundary extends from the intersection of the Conrail railroad right of way and County Line Road (County route 526), thence east on County Line Road to Brook Road, thence south on Brook Road to Ridge Avenue, thence southwest on Ridge Avenue to Somerset Avenue, thence south on Somerset Avenue to Bergen Avenue, thence west on Bergen Avenue to Linden Avenue, thence south on Linden Avenue to Ocean Avenue (State route 88), thence east on Ocean Avenue (State route 88) to Chambers Bridge Road (County route 549), thence south on Chambers Bridge Road to the Garden State Parkway, thence south on the Garden State Parkway to State route 70, thence west on State route 70 to the Lakewood-Dover Township boundary line, thence northwest along the Lakewood-Dover Township boundary line to the Lakewood-Jackson Township boundary line, thence north along the Lakewood-Jackson Township boundary line to the Conrail railroad right of way, and thence northeast along the Conrail railroad right of way to County Line Road.]\*

Recodify I. – M. as H. – L. (No change in text from proposal.)

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V. (No change from proposal.)