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OFFICE OF POLICY, PLANNING AND SCIENCE
COASTAL MANAGEMENT OFFICE
Coastal Zone Management rules
Proposed Amendments: 7:7E-5.2 and 5B.6

Authorized By: Lisa P. Jackson, Commissioner, Department of Environmental Protection

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 02-06-04/586

Proposal Number:

A **public hearing** concerning this proposal will be held on, Tuesday, June 6, 2006 starting at 11:00 am at:

Richard Stockton College of New Jersey
Townsend Residential Life Center Multi Purpose Room
Jimmy Leeds Road
Pomona, NJ 08420

Submit written comments by July 14, 2006 to:

Gary J. Brower, Esq.
Office of Legal Affairs
Attn: DEP Docket Number
NJ Department of Environmental Protection
401 East State Street
P.O. Box 402
Trenton, NJ 08625-0402

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The Department of Environmental Protection (Department) requests that commenters submit comments on 3-1/2 inch diskettes as well as on paper. The Department will be able to upload the comments onto its office automation equipment. The Department will use the paper version of the comments to ensure that the uploading was accomplished successfully. Submittal of comments on diskette is not a requirement. The Department prefers Microsoft Word 6.0 or above; however, other word processing software that can be read or used by Microsoft Word 6.0 is acceptable. MacIntosh formats should not be used.

The proposal can be viewed or downloaded on the Department's web site at <http://www.state.nj.us/dep>.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

On February 6, 2006, the Department adopted rules re-establishing certain coastal centers that are located on the mainland and expired on February 7, 2005 (see 38 N.J.R. 928(c)). During the public comment period on these rules, the Department received several comments from the public and affected municipalities concerning the impacts of these rules on affordable housing development. Several commenters indicated that the additional limitations placed on re-established coastal centers, as set forth at N.J.A.C. 7:7E-5B.6(e) and (g), would not allow their projects to comply with the impervious cover limits and vegetative cover percentages. Furthermore, concern was expressed that these regulations would substantially affect the ability of municipalities to address their low and moderate income housing obligations.

Exclusionary zoning and affordable housing were addressed by the New Jersey Supreme Court in several cases known as the Mount Laurel decisions, the first of which was decided in 1975. The Supreme Court recognized a constitutional obligation for each of the 566 municipalities in the State to establish a realistic opportunity for the provision of fair share low-

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and moderate- income housing obligations, generally through land use and zoning ordinances.

To assist municipalities in determining their fair share, the Supreme Court relied on the State Development Guide Plan, which at the time was the State's blueprint for accommodating projected growth. The Court noted that it was relying on the Guide Plan in the absence of a Legislative Statement. In response, the Legislature enacted the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. and State Planning Act, N.J.S.A. 52:18A-196 et seq., in 1985.

In the State Planning Act, the Legislature found that "[A]n adequate response to judicial mandates respecting housing for low- and moderate-income persons requires sound planning to prevent sprawl and to promote sustainable use of land." (N.J.S.A. 52:18A-196h).

The Fair Housing Act not only requires adjustments to fair share housing allocations to be made based on the same growth management considerations that are the goals of the State Plan, but also specifically requires the Council on Affordable Housing to assure that adjustments are made whenever patterns of development emerge which conflict with existing planning designations of the State Plan (N.J.S.A. 52:27D-307(c)(2)(a)-(g)).

As required by the 1993 Legislative amendments to CAFRA, the Coastal Zone Management rules (CZM rules) are closely coordinated with the State Plan. Specifically, the concept encouraged by the State Plan of concentrating development in centers was incorporated into the Department's Coastal Zone Management rules at N.J.A.C. 7:7E-5B. Particularly, this section of the CZM rules provides that impervious cover limits and vegetative cover requirements for sites in the CAFRA area are 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 center or CAFRA center.

In recognition of the importance of affordable housing to the citizens of New Jersey and in response to the comments summarized above, the Department is proposing amendments to N.J.A.C. 7:7E-5B.6 that would relax the impervious cover limits and vegetative cover percentages for proposed developments consisting entirely of affordable housing in limited

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circumstances. The proposed amendments seek to encourage center-based affordable housing development in municipalities conducting comprehensive planning while continuing to protect coastal resources.

To accomplish these goals, the proposed amendments provide relaxation of impervious cover limits and vegetative cover percentages only for 100% affordable housing developments that are located in areas which are currently undergoing comprehensive planning through the State Planning process. Specifically, relaxation is only available for 100% affordable housing development proposed in either existing mainland coastal centers (identified in Appendix 2) or in expired coastal centers (identified with an asterisk in Appendix 4) located in a municipality that, prior to October 15, 2005 held a pre-petition meeting with the Office of Smart Growth in accordance with N.J.A.C. 5:85-7.3. This requirement reflects the Department's commitment to ensuring appropriate coordination of the CZM rules with the State Planning process. Because a pre-petition meeting is the first step toward plan endorsement, this requirement assures that all municipalities that would benefit from this proposal are actively engaged in the State Planning Process. Further, providing a limited exception for certain affordable housing developments is consistent with the State Plan itself, which provides that affordable housing developments are best located in centers where services and transportation are readily available to residents. (See Statewide Goal #6 of the State Development and Redevelopment Plan)

Affordable housing developments meeting the criteria contained in the rules would qualify for relaxation of N.J.A.C. 7:7E-5B.6(e) and (g). Existing N.J.A.C. 7:7E-5B.6(e) and (g) provide, respectively, that specified environmentally sensitive areas are not to be considered part of the coastal center and that, if any portion of the proposed development is located outside of the coastal center boundaries or in one of the environmentally sensitive areas identified in (e), then the impervious cover limits and vegetative cover percentages for the entire development are those applicable to the appropriate Coastal Planning Area rather than the increased percentages applicable to the coastal center. The proposed amendments provide that these limitations would

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not apply to 100% affordable housing developments. Thus, if a portion of the proposed 100% affordable housing development were proposed in one of the six environmentally sensitive areas set forth at N.J.A.C. 7:7E-5B.6(e) or if a portion of the development lies outside the coastal center, the impervious cover limits and vegetative cover percentages for the coastal center would apply.

While the proposed amendments encourage development in centers, the CZM rules will continue to protect environmental resources in centers. The proposed amendments do not affect the Special Area and Resource rules which contain standards for the most sensitive natural resources of the coastal zone. Any proposed development, including the affordable housing developments subject to these proposed amendments, must satisfy all Special Area and Resource rules, such as wetlands, endangered and threatened species habitat, and water quality rules. This requirement ensures that the affordable housing development is designed in a manner protective of these coastal resources.

Proposed N.J.A.C. 7:7E-5B.6(h) balances the need for affordable housing with protection of coastal resources by requiring the proposed project be 100 percent affordable housing, thereby maximizing the number of affordable units and minimizing the environmental impacts from housing necessary to satisfy the municipality's affordable housing obligations. This provision will apply only through March 15, 2007, the date on which all mainland coastal centers expire, and only in municipalities that are currently engaged in the plan endorsement process, thereby allowing 100% affordable housing developments to move forward during the period of transition from coastal centers to CAFRA centers. A CAFRA permit application must be complete for review prior to March 15, 2007 to qualify under this provision, to correspond with the date on which mainland coastal centers expire.

To facilitate this amendment, the Department is proposing a definition of "100 percent affordable housing" at N.J.A.C. 7:7E-5B.2. For the purposes of this proposed amendment, "100

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percent affordable housing development” means a development in which all dwelling units are available at a sales price or rent within the means of a low or moderate income household as defined by the Council on Affordable Housing pursuant to N.J.A.C. 5:94. This definition is consistent with the Council on Affordable Housing definition of “affordable” at N.J.A.C. 5:94-1.4, as meaning a sales price or rent within the means of a low or moderate- income household.

Appendix 4, Expired boundaries of coastal centers

The Department is proposing to amend appendix 4 to denote with an asterisk, those expired boundaries of coastal centers that are located within municipalities that held a pre-petition meeting with the Office of Smart Growth prior to October 15, 2005. One hundred percent affordable housing developments proposed within these expired coastal centers are eligible for the relaxation of impervious cover limits and vegetative cover requirements proposed at N.J.A.C. 7:7E-5B.6(h). Explanatory language has been added to the introduction of Appendix 4.

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Social Impact

The proposed rule amendments will provide a positive social impact as they facilitate the development of affordable housing within areas designated for growth. The rule should encourage the provision of affordable housing opportunities for those on limited incomes, including the elderly, in areas with the services to support development while limiting environmental impacts. Center-based development also provides employment, retail, services, cultural, civic and recreational opportunities, to those who want the vibrancy of city life and the conviviality of town life. Further, the proposed amendments provide a means for municipalities to meet their affordable housing obligations. The rule amendments pertain only to municipalities actively involved in the State Planning process, thus providing additional incentive for municipalities to continue such involvement. The State Planning process is a mechanism for determining the long-term growth and development needs of a community and where these needs can be accommodated while safeguarding coastal resources. The well planned development that will result from application of the State Plan concepts will result in a positive social impact to the community. The proposed amendments continue to support a comprehensive planning process that will allow counties and municipalities a greater role in coastal planning initiatives.

Economic Impact

In comments on the rule proposal reestablishing coastal centers, the Department was made aware of several proposed affordable housing developments that have obtained funding, are in various stages of design, and were to be located in coastal centers. This rule proposal will have a positive economic impact insofar as it provides relief to those municipalities and developments that will provide affordable housing for these communities. It will also positively impact individuals who qualify for the affordable housing that may be constructed as a result of the rule, by providing housing within their means and close to transportation, employment, retail,

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services, cultural, civic and recreational opportunities.

Environmental Impact

Although the proposed rule would allow higher impervious cover limits for certain 100% affordable housing projects proposed in mainland coastal centers and for all such developments proposed in expired coastal centers, the Department will continue to protect environmentally sensitive areas through the application of the Special area, Use and Resource rules (N.J.A.C. 7:7E-3, 7 and 8). In addition, the proposed rule provides an additional incentive for municipal governments to continue to be engaged in the State Planning process. Through this process, a municipality considers growth and population trends and other issues that impact, among other things, environmental resources. One purpose of this process is to achieve consistency with the State Development and Redevelopment Plan and conformance with the resource protection standards of the CZM rules. The resultant master plans and zoning ordinances would provide protection of coastal resources in the municipality while accommodating future development needs. The centers identified for development through this process, as well as the environs identified for protection, would be reviewed for use in the CZM rules as CAFRA centers and Coastal Planning Areas. Therefore, the planning process would have a positive environmental impact.

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 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

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

Jobs Impact

This rule is anticipated to have positive, but limited impact on jobs, as there is not expected to be a large number of additional developments resulting from this rule. The construction of affordable housing developments resulting from this rule should increase short term jobs in the construction trades, building materials suppliers and other businesses that provide support services and supplies, as well as those who design such facilities.

Agriculture Industry Impact

The proposed amendments to the CZM rules are not expected to impact the agriculture industry in the CAFRA area. The rules will continue to concentrate development and reduce sprawl that consume large amounts of farmland, thus helping preserve farmland for its continued use in agriculture. Further, the proposed amendments do not change the developments exempt from the impervious cover limits and vegetative requirements under Subchapters 5 and 5B. Therefore, aquaculture will continue to be exempt from these requirements.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that some of the builders and property owners that may be affected by these provisions may be “small businesses” as defined in the Act, although most are

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anticipated to be non-profit organizations. The Department has determined that the amendments will not impose additional reporting, recordkeeping or other compliance requirements on small businesses, as defined by the Act.

The proposed amendments do not affect whether a project requires a CAFRA permit, and no new reporting or recordkeeping requirement in connection with that permit is proposed. The proposed amendments will allow 100% affordable housing development that is proposed in mainland and certain expired coastal centers to benefit from the higher impervious cover limits afforded to developments in those areas.

Smart Growth Impact

Executive Order No. 4(2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). Subchapter 5B of the CZM rules is consistent with the law and policy of New Jersey to promote smart growth and to reduce the negative effects of sprawl and disinvestments in older communities, as described in Executive Order No.4 (2002). The re-establishment of the coastal centers located on the mainland and their boundaries in February 2006 will continue the coordination of the CZM rules with the State Development and Redevelopment Plan by concentrating development in compact growth areas and limiting it in outlying and environmentally sensitive areas, as will these proposed amendments.

Since February 2000, the Department has sought to make the CZM rules consistent with the growth management policies of the State Plan. The State Plan implements the mandates of the State Planning Act, N.J.S.A. 52:18A-196 et seq, through a comprehensive set of policies and blends State, regional and local plans into a statewide map depicting growth centers, and areas designated for less intense growth, called planning areas. One of these policies is that affordable

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housing developments are best located in centers where services and transportation are readily available to residents.

The 2000 amendments to the CZM rules adopted Coastal Planning Areas and CAFRA centers that are based on those adopted in the State Plan Policy Map, and are the result of a comprehensive planning process. The growth management policies of the CZM rules promote clustered, compact development patterns, and identify areas where development is consistent with the State Plan, and areas where development should not be supported or encouraged. Overall, the CZM rules seek the protection and restoration of environmentally sensitive features while guiding and encouraging development into centers and planning areas that have the infrastructure systems to accommodate it. This rule amendment provides for development of 100% affordable housing projects within municipalities that are actively engaged in the State Planning process and therefore is consistent with the policies of smart growth.

Full text of the proposed amendments follows (addition indicated in boldface **thus**;) deletions indicated in brackets [thus]:

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

7:7E-5.2 Definitions

In addition to the terms defined at N.J.A.C. 7:7E-1.8, the following words and terms are defined for purposes of this subchapter and N.J.A.C.7:7E-5A and 5B:

“100 percent affordable housing development” means a development in which all dwelling units are available at a sales price or rent within the means of a low or moderate income household as defined by the Council on Affordable Housing pursuant to N.J.A.C. 5:94.

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...

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

(a) – (d) (No change.)

(e) The areas identified at (e)1 through 6 below shall not be considered part of a mainland coastal center, except for the purposes of (f) and (h) below:

1. – 6. (No change.)

(f) – (g) (No change.)

(h) For purposes of any CAFRA permit application that proposes a 100 percent affordable housing development in a mainland coastal center established in accordance with N.J.A.C. 7:7E-5B.6(b)1 or an expired coastal center located in a municipality that, prior to October 15, 2005 held a pre-petition meeting with the Office of Smart Growth in accordance with N.J.A.C. 5:85-7.3, the impervious cover limits and vegetative cover requirements shall be determined in accordance with N.J.A.C. 7:7E-5B.4(d) and 5B.5, respectively, provided the CAFRA permit application is complete for final review pursuant to N.J.A.C. 7:7-4.6 prior to March 15, 2007. Such applications shall not be subject to the restrictions at (g) above. This provision shall no longer be applicable to developments proposed within a mainland coastal center or an expired coastal center if the Department establishes a corresponding CAFRA center pursuant to N.J.A.C. 7:7E-5B.2(c) or (e).

[(h)] (i) For the purposes of (e)5 above, the boundaries of the Critical Environmental Sites on the State Plan Policy Map adopted by the State Planning Commission on March 1, 2001 are

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incorporated by reference into this subchapter. These boundaries are the boundaries of the Coastal Critical Environmental Sites. Whenever the State Planning Commission formally approves any new or changed Critical Environmental Site boundary within a mainland coastal center, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and this chapter. The Department shall not reject, or reject and revise, a boundary unless it finds that accepting the State Planning Commission approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be inconsistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. or this chapter. For those new or changed Critical Environmental Site boundaries located within the Pinelands National Reserve, the Department shall also, in consultation with the New Jersey Pinelands Commission, 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 State Pinelands protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). 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 determination to accept, reject, or reject and revise the boundary for the purposes of N.J.A.C. 7:7E-5B.6(e).

1. (No change.)
2. If the Department determines under this subsection to reject the State Planning Commission formally approved new or changed Critical Environmental Site boundary, any applicable boundary incorporated by reference under this subsection shall continue to be operative, except as provided under [(h)] (i)3 below.
3. (No change.)

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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.

The expired boundaries of coastal centers located in a municipality that, prior to October 15, 2005 held a pre-petition meeting with the Office of Smart Growth in accordance with N.J.A.C. 5:85-7.3 are identified with an asterisk (*). N.J.A.C. 5B.6(h) sets forth the impervious cover limits and vegetative cover requirements for a 100% affordable housing development proposed in one of the expired coastal centers identified by an asterisk. 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 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. Atlantic County expired coastal centers

A. Corbin City expired coastal hamlet*

1. (No change in text.)

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B. Estell Manor expired coastal hamlet

1. (No change.)

C. Galloway Township expired coastal centers

1. Conovertown expired coastal village*
 - a. (No change in text.)

D. Hamilton Township expired coastal centers

1. (No change.)

E. Port Republic City expired coastal centers

1. – 2. (no change.)

F. Weymouth Township expired coastal centers

1. (No change.)

II. Burlington County expired coastal centers

A. Bass River expired coastal village

1. (No change.)

III. Cape May County expired coastal centers

A. Dennis Township expired coastal centers

1. Clermont expired coastal hamlet*
 - a. (No change in text.)
2. Dennisville expired coastal village*

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a. (No change in text.)

3. Eldora expired coastal hamlet*

a. (No change in text.)

4. Oceanview expired coastal hamlet*

a. (No change in text.)

5. South Dennis expired coastal village*

a. (No change in text.)

6. South Seaville expired coastal hamlet*

a. (No change in text.)

B. West Cape May expired coastal town*

1. (No change in text.)

IV. Cumberland County expired coastal centers

A. Downe Township expired coastal centers

1. Dividing Creek expired coastal village*

a. (No change in text.)

2. Fortescue expired coastal village*

a. (No change in text.)

3. Newport expired coastal village*

a. (No change in text.)

B. Fairfield Township expired coastal centers

1. Fairton expired coastal village*

a. – b. (No change in text.)

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C. Greenwich Township expired coastal centers

1. Greenwich expired coastal village*
 - a. (No change in text.)
2. Othello expired coastal hamlet*
 - a. (No change in text.)
3. Springtown expired coastal hamlet*
 - a. (No change in text.)

D. Hopewell and Stow Creek Townships expired coastal centers

1. Roadstown expired coastal hamlet*
 - a. (No change in text.)

V. Ocean County expired coastal centers

A. Beachwood Borough expired coastal town

1. (No change.)

B. Eagleswood Township expired coastal centers

1. – 2. (No change.)

C. Island Heights expired coastal town

1. (No change.)

D. Lacey expired coastal town*

1. (No change in text.)

E. Lakehurst expired coastal town

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1. (No change.)

F. Manchester Township expired coastal center

1. (No change.)

G. Ocean gate expired coastal village

1. (No change.)

H. Pine Beach expired coastal town*

1. (No change in text.)

I. Point Pleasant Beach expired coastal town

1. (No change.)

J. Point Pleasant Borough expired coastal town*

1. (No change in text.)

K. Stafford Township expired coastal centers

1. – 2. (No change.)

VI. Salem County expired coastal centers

A. Elsinboro Township expired coastal centers

1. Oakwood Beach expired coastal village*

a. (No change in text.)

2. Sinnickson's Landing expired coastal village*

a. (No change in text.)

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B. Lower Alloways Creek Township expired coastal centers

1. – 3. (No change.)

C. Mannington expired coastal hamlet

1. (No change.)

D. Quinton expired coastal village*