



*State of New Jersey*  
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March 7, 2008

The Honorable Malcolm C. Fraser  
Mayor, Borough of Cape May Point  
215 Lighthouse Avenue  
P.O. Box 490  
Cape May Point, NJ 08212

**Re: Cape May Point Petition for Initial Plan Endorsement – Consistency Review**

Dear Mayor Fraser:

The Office of Smart Growth (OSG) and our state agency partners have reviewed the Initial Plan Endorsement petition submitted by Cape May Point Borough for consistency with the State Development and Redevelopment Plan (State Plan) and would like to commend the Borough for its active participation and dedication to the Plan Endorsement process. However, significant consistency issues remain that need to be resolved prior to OSG's recommendation for endorsement. Pursuant to N.J.A.C. 5:85-7.5(f), OSG requests additional information as outlined below in order to recommend the Cape May Point Borough petition for Initial Plan Endorsement by the State Planning Commission (SPC). OSG and our state agency partners are committed to working with the Borough to establish a timeline to address the consistency issues to receive Plan Endorsement from the SPC.

**State Agency Consistency Review**

The SPC reviews petitions for plan endorsement and endorses them on the basis of their consistency with the goals, policies and strategies of the State Plan and in accordance with the Plan Endorsement Guidelines. Upon review of the petition, OSG and the state agencies have identified areas of concern that need to be addressed before OSG can make a recommendation to the SPC to find the petition consistent with the State Plan. In cooperation with the state agencies, resolution of the issues identified in this report will also address issues that NJDEP has identified in order for DEP to designate a CAFRA center in Cape May Point Borough under the Coastal Areas Facility Review Act (CAFRA).

In order for DEP to designate a center endorsed by the SPC as a CAFRA Center, DEP must be able to make a finding that the center is consistent with the purposes of CAFRA and the Coastal Zone Management Rules. DEP must determine whether accepting a center would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment. The DEP will provide technical assistance to complete the CAFRA requirements discussed below.



The Coastal Zone Management Rules require DEP to make this consistency determination within 90 days of SPC's endorsement. Therefore, municipalities seeking CAFRA center designation from DEP should plan to meet the additional CAFRA requirements prior to or within 45 days of State Planning Commission endorsement. Fulfillment of these tasks will be necessary for DEP to accept boundary changes approved in Plan Endorsement for use in the CAFRA permit review under the Coastal Zone Management rules.

Attached are two documents, "Requirements for Municipal Plan Endorsement Consistency" and "Requirements for CAFRA Consistency" that provide further guidance as to what is needed in order to achieve plan endorsement by the SPC and to achieve CAFRA center designation from DEP subsequently thereafter. You can also find the attached documents and other Plan Endorsement-related guidance online at the OSG website, <http://www.nj.gov/dca/osg/plan/endorsement.shtml>.

## **Consistency Issues**

### Proposed Center Boundary and Planning Area Changes

Cape May Point Borough's petition includes a request to designate the Borough as a Village. Cape May Point Borough meets the Village Center Criteria described in the State Plan. The CAFRA Mainland Coastal center boundary shall be consistent with proposed State Plan center boundary and the sewer service area. The Borough shall work with OSG and state agencies to finalize boundaries for a Center, Critical Environmental Sites and any Historic and Cultural Sites. The center boundary shall be revised to exclude the beaches and dunes.

### Fair Share Plan

Page 2-13 of the 2006 Master Plan calculated Cape May Points affordable housing obligation at 31 units. COAH's third round substantive rules list Cape May Point's prior round obligation as 34 new construction units which was reduced by COAH to a zero-unit realistic development potential and a three-unit rehabilitation obligation in a January 5, 1999 grant of substantive certification. However, Cape May Point must still provide a realistic opportunity to capture unmet need. The housing element and fair share plan shall be updated to reflect COAH's new third round rules. It is anticipated that the new rules will become effective on June 2, 2008 and that CMP will be required to petition COAH with a revised plan by September 30, 2008. Please submit the following items to COAH: 2006 Project Information Form, documentation of funding sources, demonstration that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartments, and a draft or adopted operating manual that includes a description of the program procedures.

### Emergency Planning

The petition shall include formal evidence that the Borough has an Emergency Operating Plan approved by the New Jersey State Police. An approval letter from the State Police may be submitted in lieu of the full Plan.

### Coastal Consistency Statement

This statement shall address natural resource protection and coastal management in Cape May Point Borough through demonstration of consistency of local plans and ordinances with the goals of the Coastal Zone Management Program found in the Coastal Zone Management rules at N.J.A.C. 7:7E et seq. Municipal plans shall also be consistent with existing DEP rules, permits or plans including Municipal Stormwater Regulations and Federal River Management Plans.

### Wastewater Management Plan

Petitioners shall prepare a credible municipal-wide WMP for review by DEP's Office of Planning and Sustainable Communities, (OPSC). For the purposes of Plan Endorsement, OPSC will review municipal

WMP's for consistency with the Municipality's Petition for Plan Endorsement, Department cross-program regulatory and planning policies, and the State Development and Redevelopment Plan.

A Wastewater Management Plan guides the implementation of a township-wide wastewater management strategy. The Plan establishes sewer service areas and septic densities, ensures that the capacities of water supply and treatment infrastructure are matched and directs the implementation of other water quality protection measures. The municipality will be required to pursue formal approval from the Division of Watershed Management in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15.

#### Stormwater Management Ordinance

The Borough shall adopt ordinances as outlined in the Stormwater Management Plan including, Stormwater Control Ordinance, Wildlife Feeding, Yard Waste Collection Ordinance, Improper Disposal of Waste (Into Storm Sewers), Illicit Connection and Containerized Yard Waste. The Borough should submit their Stormwater Control Ordinance or proof that the ordinance is current and has been approved by DEP. The Borough should consider additional measures that incorporate the use of alternative stormwater treatment options throughout the Borough as a coastal community. For example, the Borough should encourage the utilization rain gardens or bioswales in other appropriate locations throughout the community. Additionally the Borough could consider installing stormwater catch basins that separate and filter sediments when replacing Borough stormwater infrastructure.

#### Water Supply Plan/ Buildout Clarification

The Borough shall provide documentation that water supply capacity exists for the amount of growth detailed in the endorsed Master Plan. Cape May Point has provided several build-out scenarios for the Borough. For example, the MP 2006 (page 4) suggests that current zoning would allow for an additional 104 homes within the Borough. The MP 2006 also states that there were 618 homes in the Borough as of 1997. According to the ERI (page 87), the planning limit for the Borough is 759. 104 additional homes and 618 current homes is 722 homes, not 759. Additionally the projection for Cape May Point is 778 dwelling units (ERI page 87). The Borough shall determine the number of units that could be built and determine if capacity is available for these additional units. This capacity must identify existing and proposed water supply sources. For existing public water sources, identify the available approved allocations and firm capacity. In addition, the Borough must identify local water conservation measures required to ensure efficient use of available resources and methods to be used to promote wastewater reuse.

#### **Planning and Implementation Agreement (PIA)**

The PIA outlines the ongoing planning and regulatory changes needed to implement the Endorsed Plan. As Cape May Point Borough seeks both State Plan and CAFRA Center designation, the PIA includes two sections dealing with implementation necessary to meet both Plan Endorsement and the Coastal Zone Management Rules. The PIA shall include the following:

#### **DEP CAFRA Consistency PIA Requirements**

##### Environmental Justice Inventory

DEP will provide the Borough with an Environmental Justice Report so that the Borough will have it available to reference when making land-use decisions. The Borough will provide information as needed to complete the Environmental Justice Report.

### Open Space and Recreation

The Borough should update the Conservation, Recreation, and Community Facilities Elements of the Master Plan. Specifically, the Borough shall evaluate the current strategies in place increase drivers' awareness that walkers, joggers, bikers, etc. have the right of way under any circumstances. (MP 2006, 4-3) In addition, the Borough shall evaluate its open space inventory and determine additional areas appropriate for open space as well as alternatives to acquiring these areas.

### Habitat Conservation Program

The Borough will establish conservation requirements and implementation measures to fully mitigate any incidental take of suitable habitat of a State listed endangered or threatened species consistent with the requirements at N.J.A.C. > 7:25B. Conservation Plan requirements may include a mix of options that include the creation, enhancement, restoration, acquisition of preservation of habitat and/or monetary contributions for these purposes. There are many planning and development initiatives that the Borough could employ to further strengthen their efforts to preserve and enhance natural resources within the community. Initiatives can include, but are not limited to the following: backyard habitat program, environmental assessment requirements for new development, and education programs.

### Water Conservation Plan

As a Coastal Community, water conservation is important to the Borough's sustainability and ability to support current and future populations. The Borough should explore wastewater re-use opportunities as well as conservation measures including but not limited to home improvements, vegetation requirements, and education. The Borough shall also consider alternate water sources for outside watering. In addition, the Borough shall identify local water conservation measures required to ensure efficient use of available resources as well as methods to promote wastewater reuse.

### **State Plan PIA Requirements**

Generally, the PIA shall be formatted by subject with corresponding numbering. OSG shall provide a template for this format. Through negotiations, the timeframes in the PIA shall be revised to be more specific (i.e. specific timeframes for completion of tasks, rather than the range that is currently provided in the Draft PIA).

### General

- The Borough shall submit drafts of new or significantly revised planning documents required by this PIA for review by the OSG and partner agencies.
- Upon fulfillment of the CAFRA Coastal Consistency requirements, DEP shall publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the boundaries of any centers, cores, nodes or planning areas that are part of Plan Endorsement.
- The Borough shall submit a biennial report concerning the terms of this PIA and related efforts pursuant to NJAC 5:85-7.12(c). Due to the significant number of PIA items likely to be addressed in the first year, the Borough shall submit the first report one year after Endorsement, and then every two years thereafter.
- For PIA entries that require NJDOT assistance, the state assistance column shall have an asterisk denoting the following: "When requested, NJDOT shall give priority consideration to providing technical assistance consistent with program requirements and subject to the availability of state resources."
- The Borough shall coordinate with planning efforts of adjoining municipalities, the County and State and regional planning efforts particularly concerning: regional planning, transportation, economic development, tourism, natural resource protection and open space and recreation.

### Historic Preservation Ordinance

The Borough shall meet with the State Historic Preservation Office, (SHPO) and consider establishing a Historic Preservation Commission.

### Wastewater Management Plan

To implement the Wastewater Management Plan created during the Action Plan phase of Plan Endorsement, Cape May Point will be required to pursue formal approval from the Division of Watershed Management in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15.

### Hazard Mitigation Plan

In planning for public safety, the municipality needs to inventory potential hazards and consider how to mitigate them. Hazards relevant to New Jersey include coastal erosion, floods, hurricanes, land slides, severe storms, storm surges, etc. This plan will inventory natural hazards the Borough is most likely to face as well as the measures currently in place to mitigate these hazards. If done properly, the Hazard Mitigation Plan will allow the community to evaluate current mitigation efforts, identify weaknesses in with those efforts, and recommend new mitigation efforts to better prepare the Borough for natural hazards.

The land use plan, circulation plan, development ordinances, community facilities plan, and environmental protections ordinances should reflect mitigation measures identified in municipal, county and/or regional hazard plans. Examples of mitigation measures include: Appropriate land use planning that does not overtax road capacity, the ability to rely on a road network rather than a single highway for evacuation, and flood control requirements.

### Zoning Ordinance

The zoning ordinance revisions and/or new ordinances must implement the policies and recommendations of the master plan, and accurately reflect center boundaries. The ERI highlights several municipal actions that the Borough shall implement:

- Amend master plan and zoning to reflect the locations of wetlands.
- Amend development application checklist to include: copy of Letter of Exemption and copy of Letter of Interpretation.
- Amend final site plan and/or subdivision application requirements to include submission of a map showing a state approved wetland delineation and transition area boundaries at the same scale as the municipal tax map, when wetlands exist on the subject or adjacent tract.
- Report violations of the Freshwater Wetlands Protection Act to the State's Enforcement Office.

While not located within the Borough, the magnesite plant at Sunset Beach destroyed many pines, cedars and oaks in Cape May Point. The Borough should consider planning initiatives to re-introduce the pines, cedars, and oaks that were destroyed. Facilitating this re-introduction of trees will not only improve air quality within the Borough, but will also provide additional "backyard" habitat for the migrating bird populations that frequent the Borough.

### Conclusion

Pursuant to N.J.A.C. 5:85-7.5(f), the Borough shall submit an amended petition within 90 days, by May 8, 2008. Should the Borough be unable to provide us with the necessary items within the prescribed timeframe, the petition shall be considered withdrawn and no further action shall be taken by OSG unless Cape May Point Borough resubmits a petition for consideration.

On October 17, 2006, the State Planning Commission adopted a resolution that authorizes OSG to continue to work with petitioning entities towards Plan Endorsement by allowing for an extension of the time periods contemplated by the State Planning Rules through the execution of a Memorandum of Understanding (MOU) and an agreed-upon Action Plan that establishes timelines for completion and evaluation of the tasks identified by the Action Plan. Any extension of time authorized by an MOU would be contingent on the petitioning entity's compliance with a mutually agreed-upon Action Plan, compliance with the MOU, and the petitioning entity's good faith efforts towards achieving Plan Endorsement.

Should the Borough choose to work under an Action Plan and MOU with the SPC, please notify OSG within 60 days of receipt of this letter, or by April 8, 2008. Given the breadth of items to be resolved, we recommend that you enter into the Action Plan and MOU. Accordingly, we would like to schedule a meeting with you and representatives of the relevant state agencies to further discuss next steps and formulate this Action Plan.

Thank you again for your commitment to the Plan Endorsement process. If you have any questions or concerns, please feel free to contact Kate Meade, Planner for Cape May County within the Office of Smart Growth, at (609)-633-8573 or via email at [kmeade@dca.state.nj.us](mailto:kmeade@dca.state.nj.us).

Sincerely,

Benjamin L. Spinelli  
Executive Director

BLS:km

Attachments

c: James J. Smith, Cape May County Planning Director  
Karl Hartkopf, P.P., AICP, Planning Director, OSG  
Cape May Point Borough Plan Endorsement File