



Department of Environmental Protection Rules Concerning Coastal Centers

By William F. Harrison, Esq.

On February 6, 2006, the Department of Environmental Protection (DEP) adopted amendments to the Coastal Area Facility Review Act rules that have great significance for property owners and others with an interest in the development of the Coastal Area. In order to explain the significance of the adopted amendments, a short history of what led to these rules is necessary.

BACKGROUND

In 1993, the legislature amend the Coastal Area Facility Review Act (CAFRA), (N.J.S.A. 13:19-1 et seq.) to require DEP, when adopting the required rules to implement those amendments, to consult with

the State Planning Commission (SPC) to ensure that the adopted rules were closely coordinated with the provisions of the State Development and Redevelopment Plan (State Plan). In response to these statutory amendments, DEP adopted rules for determining impervious cover limits and vegetative cover percentages for sites in the CAFRA area. The impervious cover limits were based on the planning area designations contained in the State Plan, as well as the ability of a municipality to designate centers within those planning areas pursuant to the rules adopted by the SPC. The DEP rules allow for significantly higher impervious cover in areas that were

designated as either as a coastal or a CAFRA center. The CAFRA rules provide the following maximum impervious coverages in coastal and CAFRA centers: hamlets: 50 percent, villages: 60 percent, towns: 70 percent, regional centers: 80 percent and urban centers: 90 percent. This is to be contrasted with the maximum impervious coverages outside of the centers — rural and environmentally sensitive planning areas: 3 percent, fringe planning area and suburban planning area outside of a sewer service area: 5 percent, suburban planning area within a sewer service area: 30 percent and metropolitan planning area:

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80 percent. There are no metropolitan planning areas in any of the municipalities discussed below. The intent of the DEP rules concerning impervious cover was to encourage development in areas with existing development and infrastructure, discourage sprawl and protect sensitive natural resources.

The DEP rules also established boundaries for the coastal centers where centers

had not yet been formally designated by the SPC. The boundaries of coastal centers located on barrier islands, oceanfront spits and peninsulas were not given an expiration date because these areas were already intensively developed. However, a five-year expiration date, February 7, 2005, was established for the coastal centers located on the mainland. This was because the mainland coastal centers were adopted by

DEP as an interim measure to accommodate development until the municipalities containing mainland coastal centers had been given the opportunity to obtain center designation through the plan endorsement process established in the rules adopted by the SPC. Once the SPC designates a center in the CAFRA area through the plan endorsement process and DEP accepts that center through a notice published in the *New Jersey Register*, the coastal center then becomes a CAFRA center and is no longer subject to the expiration provision. Since the mainland coastal centers were only intended to be an interim measure, the center boundaries drawn by DEP were not the result of a comprehensive planning analysis. The five-year period was intended to provide sufficient time for municipalities to obtain center designation through the comprehensive plan endorsement process and then become a CAFRA center.

DEP RULEMAKING

DEP denied petitions for rulemaking from the New Jersey Builders Association and K. Hovnanian Shore Acquisitions, LLC requesting that DEP extend the expiration of the boundaries of the coastal centers from February 7, 2005, to February 7, 2010. However, after consideration of information presented to it, and in recognition that some local governments had committed substantial time and money on diligent efforts to obtain plan endorsement from the State Planning Commission, DEP determined it appropriate to re-establish the boundaries of some of the mainland coastal centers that expired on February 7, 2005, for a limited term and in limited circumstances. As a result, DEP proposed rules to re-establish the certain mainland coastal centers on July 5, 2005. These proposed rules were adopted on February 6, 2006.

The adopted rules only re-established coastal centers in those municipalities which were seeking to have the centers

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designated by the State Planning Commission through the plan endorsement process. The adopted rules established two ways by which a municipality could meet this requirement. Under the first alternative, mainland coastal centers in municipalities that formally initiated the State Planning process prior to July 5, 2005, were re-established as of the February 6, 2006, effective date of the rules. However, in order for the mainland coastal center to remain in effect after March 15, 2006, the Office of Smart Growth (OSG) must determine pursuant to the State Planning rules that the initial petition for plan endorsement submitted by that municipality was complete prior to March 15, 2006. Pursuant to the State Planning Act (N.J.S.A. 52:18A-196 et seq.), the Office of Smart Growth provides staff for the State Planning Commission.

Under the second alternative in the adopted DEP rules, municipalities which had not initiated the plan endorsement process by July 5, 2005, could re-establish their mainland coastal centers by requesting a pre-petition meeting with the Office of Smart Growth by August 4, 2005, holding that pre-petition meeting by October 15, 2005, and receiving a determination from the Office of Smart Growth that its initial petition for plan endorsement is complete prior to March 15, 2006. For those municipalities, the mainland coastal center would be re-established as of the date its initial petition for plan endorsement was deemed complete by the Office of Smart Growth.

In either case, the re-established boundaries will remain effective only until March 15, 2007, or until the municipality's petition for initial plan endorsement has been approved by the State Planning Commission and DEP has accepted the State Planning Commission's approved center boundary as a CAFRA center boundary, whichever occurs first. A center boundary contained in an approved petition for plan endorsement that is accepted by DEP becomes the

CAFRA center boundary replacing the former coastal center boundary.

It should be noted that the coastal center boundary that is re-established pursuant to these rules on a temporary basis is not identical to the coastal center that existed prior to February 7, 2005. Under the adopted rules, certain environmentally sensitive areas are not considered part of the re-established mainland coastal center in order to protect water and natural resources. The environmentally sensitive areas that are not considered part of the mainland coastal center include endangered and threatened wildlife species habitat, Natural Heritage Program priority sites, open space, special water resource protection areas adjacent to Category 1 waters, wetlands and Coastal Critical Environmental Sites. These environmentally sensitive areas would still be considered part of the re-established mainland coastal center boundary for CAFRA permit applications that were received by DEP prior to February 7, 2005, provided those applications were deemed complete prior to March 15, 2006.

IMPLEMENTATION OF THE DEP RULE

The following municipalities met the other requirements of the adopted rule and had their initial petitions for plan endorsement deemed complete prior to March 15, 2006, and thus have had their mainland coastal centers re-established pursuant to the adopted DEP rules: in Atlantic County, Egg Harbor Township (petition includes the mainland coastal centers of West Atlantic City and Egg Harbor); in Cape May County, Lower Township (petition includes the mainland coastal centers of Schellinger's Landing, Town Bank/North Cape May and Villas), Middle Township (petition includes the mainland coastal centers of Cape May Court House, Del Haven, Goshen, Green Creek, Rio Grande, Swainton and Whitesboro/Burleigh), Upper Township (petition includes the mainland coastal centers of Marmora/Beesley's Point/Pal-

ermo, Petersburg, Seaville and Tuckahoe); and in Ocean County, Barnegat Township (mainland coastal center of Barnegat), Brick Township (mainland coastal center of Brick), Dover Township (mainland coastal center of Toms River) and Lakewood (mainland coastal center of Lakewood).

In addition, on December 7, 2005, the State Planning Commission approved the petition for plan endorsement submitted by Ocean Township in Ocean County. That petition included designation of the mainland coastal center of Waretown. While the approved center boundary did exclude some environmentally sensitive lands that had been part of the expired coastal center, it also included additional vacant developable lands that had not been included as part of the expired coastal center. In addition to the changes to the coastal center boundary, the approved petition included major changes to the State Plan planning area designations outside of the center.

IMPLICATIONS OF THE DEP RULES

The changes to both the center boundary and the planning area boundaries that occurred through the plan endorsement process in Ocean Township demonstrate the importance of interested persons participating in the plan endorsement process. Under the rules of the State Planning Commission, there is a comment period during which members of the public can submit comments on the completed petition to the Office of Smart Growth. The comment period is for a period of 45 days from the date that the Office of Smart Growth deems the petition to be complete. Except for the Upper Township petition, which was deemed complete on January 20, 2006, and the Middle Township petition, which was deemed complete on January 27, 2006, all the other petitions were deemed complete on March 14, 2006.

The Office of Smart Growth makes a recommendation as to whether the State Planning Commission should approve,

approve with required changes or deny the petition. That recommendation and the petition are then presented to the Plan Implementation Committee of the State Planning Commission for review. The meetings of the Plan Implementation Committee are open to the public, and there is an opportunity provided for public comment. The petition is then presented to the State Planning Commission for action. Again the meetings of the State Planning Commission are open to the public with an opportunity for public comment. In general, it is more effective to raise concerns with the petition as early as possible in the process.

The Office of Smart Growth is required to post the status of all petitions for plan endorsement on its website, www.nj.gov/dca/osg, as well as posting notice of all meetings of the Plan Implementation Committee and the State Planning Commission. In addition, copies of the submitted petitions are available on the OSG website. In addition to the municipalities listed above, there are other coastal communities that did not meet the deadlines set forth in the DEP rules to re-establish their coastal centers and other municipalities throughout the state that are pursuing the plan endorsement process. In these municipalities, interested persons should both participate locally in the development of the petition, as well as participating in the State Planning Commission plan endorsement process.

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