

Interim Policies Governing Affordable Housing Development in the Meadowlands District

Effective July 24, 2008

Revised October 2, 2008, October 21, 2008, January 28, 2009, May 27, 2009, August 18, 2010

Last revised July 27, 2011

I. Intent and Purpose

On January 11, 2007, the New Jersey Meadowlands Commission (NJMC) adopted comprehensive rules governing affordable housing in the Meadowlands District. The rules, which became effective on February 5, 2007, were effectuated to ensure that municipalities are able to satisfy their affordable housing obligations in a manner consistent with the New Jersey Council on Affordable Housing (COAH)'s third round rules.

In a decision dated January 25, 2007 (A-1960/2665/2674/2706-04T3), the Appellate Division of the New Jersey Superior Court affirmed in part, reversed in part, and remanded portions of COAH's third round rules back to COAH for rulemaking. The remanded portions included elements upon which the NJMC's newly adopted affordable housing rules had been based. In a separate decision, issued May 21, 2007, the Appellate Division affirmed that the NJMC is authorized to affirmatively plan for affordable housing in the Meadowlands District. IMO Adoption of N.J.A.C. 19:3, 393 N.J. Super. 173 (App.Div.2007).

On August 22, 2007, the NJMC responded to these court decisions by adopting Resolution No. 07-74, which instituted guidelines entitled *Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission* (subsequently amended by Resolution No. 08-03 and Resolution No. 08-18). These guidelines were implemented to govern the review of and restraints upon applications for further development in the Meadowlands District until the NJMC adopts new affordable housing regulations consistent with COAH's third round rules, as amended and proposed. COAH subsequently proposed new rules in the New Jersey Register on January 22, 2008 to address the Appellate Division decision dated January 25, 2007. At its May 6, 2008 meeting, COAH adopted these new rules, with an effective date of June 2, 2008, and, in addition, proposed amendments to the adopted rules.

The Commission has acted to address these matters promptly following publication of COAH's amended rules (Id. at 179; see also, IMO Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1 (App Div.) Certif. denied, _ N.J. _ (2007)). Additionally, Assembly Bill No. 500/Senate Bill No. 1783, an act concerning affordable housing, revising and supplementing various parts of the statutory law, was signed into law on July 17, 2008 by Governor Jon S. Corzine.

On July 23, 2008, staff received authorization to prepare and submit a Notice of Proposal to the Office of Administrative Law regarding proposed affordable housing

rules which are consistent with COAH's revised third round rules, the proposed amendments to the third round rules, and Assembly Bill No. 500/Senate Bill No. 1783. Interim policies are needed, however, to govern the planning and zoning for affordable housing in the District until the NJMC proposes new regulations.

Accordingly, the policies that appear herein replace the *Emergency Restraints*, which were based in part upon COAH's original third round rules dated December 20, 2004. The policies shall apply to all zoning certificate applications already filed with the NJMC which have not received zoning certificate approval as of July 24, 2008, and to all zoning certificate applications received by the NJMC on or after July 24, 2008. In addition, the policies governing site suitability determinations shall apply to petitions to amend the Official Zoning Map, new redevelopment plans, and proposed amendments to a redevelopment plan pertaining to new proposed uses or changes to existing uses. The policies shall remain in effect until legislation is enacted that impacts affordable housing requirements in the District or necessitates the reevaluation of this policy, new regulations are promulgated by COAH*, the NJMC proposes new zoning regulations governing affordable housing, or these policies are withdrawn or rescinded by Commission action or court order, whichever of the foregoing shall occur first.

II. Applicability

- (a) Compliance with these interim policies and all pertinent COAH requirements shall be a condition of any zoning certificate issued by NJMC with respect to applications approved by the NJMC, pursuant to N.J.A.C. 19:4-4.5, on or after July 24, 2008.
- (b) A site suitability determination in accordance with Subsection IV.(c) of these interim policies shall be completed prior to the adoption of any new redevelopment plan or the adoption of amendments to an existing redevelopment plan pertaining to new proposed uses or changes to existing uses, proposed in accordance with N.J.A.C. 19:3-5.15. The NJMC shall not amend the uses of a redevelopment plan unless the amendment complies with these interim policies.
- (c) A site suitability determination in accordance with Subsection IV.(c) of these interim policies shall be completed prior to the filing of a notice of adoption with the Office of Administrative Law amending the Official Zoning Map in accordance with N.J.A.C. 19:3-1 (Rulemaking). The NJMC shall not adopt new

* Due to recent reorganization actions regarding the Council on Affordable Housing, for the purposes of this document, any reference to COAH shall also include any future entity assuming the legal responsibilities of the Fair Housing Act.

zoning or a change of zoning unless the proposed rulemaking complies with these interim policies.

- (d) The NJMC shall not issue a certificate of completion and/or occupancy certification unless the proposed project complies with these interim policies.
- (e) These interim policies shall constitute the controlling instrument with respect to development in the District.

III. Exemptions

- (a) Zoning certificate applications for the following are exempt from these interim policies:
 - 1. Development limited to one (1) or two (2) market-rate dwelling units.
 - 2. Development by municipal, county, state, and federal government; and utilities, housing and improvement authorities. Affordable housing development by these parties would, however, be eligible to receive the incentives offered to other developers in Section VI.
 - 3. Signs, fences/gates, site improvements, tanks, antennae, transmission towers and associated utility structures, recycling and/or refuse areas, loading doors, compactor and concrete utility pads, fill/stockpile operations, salt storage areas, construction trailers, guard sheds, storage sheds with a floor area of less than 400 square feet, remediation activities, temporary uses, and external mechanical equipment.
 - 4. Reoccupancy of, or a change in use within, an existing non-residential structure, unless the square footage of the structure would increase.
 - 5. Development on properties formerly utilized as landfills that were subject to remediation that required engineering controls for the management of landfill gas and/or leachate.
 - 6. Development on properties designated as U.S. EPA Superfund sites.

IV. Site Suitability Determination

- (a) A site located within one of the following zones shall be deemed unsuitable for housing, and a zoning certificate application for development on the site shall proceed in accordance with N.J.A.C. 19:4-4:
 - 1. Environmental Conservation;

2. Parks and Recreation;
3. Aviation Facilities;
4. Public Utilities;
5. Light Industrial B;
6. Intermodal A;
7. Intermodal B;
8. Heavy Industrial;
9. Belleville Turnpike Redevelopment Area;
10. Kearny Redevelopment Area;
11. Kingsland Redevelopment Area; or
12. 16th Street Redevelopment Area.

(b) A zoning certificate application for residential development that is permitted as a principal use within the zone shall proceed in accordance with N.J.A.C. 19:4-4.

1. Development including five (5) or more dwelling units shall comply with Section VI.

(c) For all other zoning certificate applications, petitions for rezoning, new redevelopment plans and amendments pertaining to new proposed uses or changes to existing uses within existing redevelopment plans proposed in accordance with N.J.A.C. 19:3-5.15, a team of three (3) NJMC staff members, one of whom shall be a licensed professional planner and one of whom shall be a licensed professional engineer, (“Review Team”) shall review each application, petition for rezoning or redevelopment area, as applicable, and prepare a recommendation regarding the suitability of the subject property for housing. At the applicant’s cost, the Review Team may be supplemented by a licensed professional planner appointed by, and at the discretion of, the municipality in which the proposed application, petition for rezoning or redevelopment area is located. The applicant shall be responsible for the cost of the municipal planner’s review time; said cost shall be calculated in accordance with the planner’s current hourly rate charged to the municipality, not to exceed \$150 per hour for a maximum of 3 hours. The recommendation prepared by the Review Team shall be forwarded to the Commission for final action.

1. A site may be deemed suitable for housing only if it meets all of the following criteria:
 - i. The site is adjacent to compatible land uses and has access to appropriate streets;
 - ii. The site has access to water and sewer infrastructure with sufficient capacity;
 - iii. The site can be developed consistent with the rules of the NJMC;
 - iv. Former and existing land uses, either on the site or in the vicinity, may not expose residents to environmental hazard. Alternatively, the site shall be remediated to NJDEP residential standards as a condition of the Board's approval;
 - v. The size, shape, or layout of any existing structures that shall remain, or other physical limitation(s) not listed previously, do not preclude residential use; and
 - vi. The site is suitable for residential use pursuant to sound planning principles.
2. The development of any site determined to be suitable for housing shall not be permitted to proceed with a solely non-residential development until legislation is enacted that addresses affordable housing requirements in the District or necessitates the reevaluation of this policy, new regulations are promulgated by COAH, the NJMC proposes new zoning regulations governing affordable housing, these policies are withdrawn or rescinded by Commission action or court order, or the NJMC amends the applicable redevelopment plan to provide for affordable housing in accordance with the requirements in Section VI of these interim policies. If the property in question is determined to be suitable for housing by the requirements of Section IV, a petition for rezoning shall be denied without further deliberation and any non-residential uses requested shall be denied, unless the petition includes, or is amended to include, residential development.
3. Non-residential development of any site determined to be unsuitable for housing shall proceed in accordance with the procedures in N.J.A.C. 19:3-1 or 19:4-4, as applicable.

V. Requests for Site Suitability Determination

- (a) A property owner or applicant may request that the Board of Commissioners evaluate the suitability of a particular site for housing in a zone that does not permit residential dwellings as a principal use. The following procedure shall supersede the use variance requirements of N.J.A.C. 19:4-4.14:

1. The applicant shall provide the following information:
 - i. A complete site suitability application form, signed by the property owner and applicant;
 - ii. A site suitability application fee in the amount of \$1,500;
 - iii. A complete zoning certificate application prepared in accordance with N.J.A.C. 19:4-4.3;
 - iv. A statement of the characteristics of the subject property which demonstrates that the site is suitable for residential use. The statement shall include, but not be limited to, size, location, surrounding land uses, access to appropriate streets, adequate infrastructure, environmental factors, and sound planning principles;
 - v. A Project Impact Assessment, if applicable as per N.J.A.C. 19:4-10.2; and
 - vi. Other such information as may be deemed necessary from a specific applicant by the NJMC.
2. A public hearing on the site suitability request shall be held in accordance with N.J.A.C. 19:4-4.17.
3. The Review Team shall review the request and make specific written findings of fact based upon the complete record. A site shall not be deemed suitable for residential use unless the site satisfies the criteria in IV(c)1.
4. Upon conclusion of the suitability review, the recommendation of the Review Team shall be forwarded to the Hackensack Meadowlands Municipal Committee (HMMC) for their review.
5. The HMMC shall review the recommendation and indicate its position in writing to the NJMC. Failure of the HMMC to state its position within 45 days of receipt of the matter shall be deemed to constitute approval of the proposed action.
6. After HMMC action, the recommendation shall be forwarded to the Board of Commissioners for final action. The Board of Commissioners shall decide, by a concurring vote of the majority of its members, to grant or deny the site suitability request, based upon the record of the matter.
7. The decision of the Board of Commissioners shall be memorialized by a formal written resolution adopted at the meeting at which the site suitability request is decided.
8. If the Board of Commissioners approves the request, the property owner shall comply with these interim policies and all currently adopted COAH requirements.

9. A copy of the decision of the Board of Commissioners shall be transmitted to the property owner and applicant by the NJMC via certified mail, and the NJMC shall advise the applicant of its right to appeal said decision as a final action of the Board of Commissioners in accordance with N.J.A.C. 19:4-4.19(e).
 10. No person shall contact or attempt to contact any member of the Board of Commissioners or the NJMC staff regarding a site suitability application to discuss an impending decision on the subject application after the close of the public record.
 11. The approval of a site suitability decision shall become null and void five years after the date on which the approval is issued, unless within such period a zoning certificate is obtained.
 12. No extensions of approval of the site suitability decision shall be granted.
- (b) The NJMC will accept petitions for rezonings from municipalities seeking to rezone land in the District to meet their affordable housing obligations in accordance with COAH requirements and the regulations set forth in N.J.A.C. 19:3.

VI. Inclusionary Development

- (a) Affordable dwelling units shall be provided in a residential development in accordance with law or COAH regulation or resolution.
1. When the calculation of required affordable units results in a fraction of a unit, that figure shall be rounded to the nearest hundredth decimal place. The requirement for a fractional affordable unit may be satisfied by providing one affordable unit within the development or by making a pro-rated payment in lieu of construction.
 2. A payment in lieu of construction shall be determined and collected as follows:
 - i. The payment shall be calculated in accordance with the current per-unit subsidy established for the housing region by COAH, as amended and supplemented. The initial subsidy shall be as established by state law or COAH regulation or resolution. The calculated obligation shall be rounded to the nearest hundredth decimal place and multiplied by the per-unit subsidy rate.

- ii. For development in a municipality that has adopted an ordinance providing for payments in lieu of constructing affordable units on site, the payment shall be calculated and collected by the municipality, and not by the NJMC. Proof of payment to the municipality shall be submitted to the NJMC prior to the issuance of any temporary or final certificate of completion and/or occupancy certification.
 - iii. For development in a municipality that has not adopted an ordinance providing for payments in lieu of construction of affordable units on site, the NJMC shall calculate and collect the payment on behalf of the constituent municipality. The NJMC shall not issue a temporary or final certificate of completion and/or occupancy certification for the development until such payment is received in full or until a guaranteed payment plan is effectuated. Payments shall be maintained in an Affordable Housing Trust Fund as per Section VIII.
- (b) An increase in the maximum permitted residential density shall be permitted as an incentive for providing affordable housing within a residential development, as follows:
1. In the Low Density Residential zone, the total number of units allowed by the maximum permitted density in the zone, as per N.J.A.C. 19:4-5.29, shall be increased in accordance with the number of affordable units required by law or by COAH regulations or resolution.
 2. In the Planned Residential zone, the total number of units allowed by the maximum permitted density in the zone, as per N.J.A.C. 19:4-5.36, shall be increased in accordance with the number of affordable units required by law or by COAH regulation or resolution.
 3. In redevelopment areas, or portions thereof, that are deemed suitable for residential use, the maximum permitted density shall be provided in the Redevelopment Plan. The determination of the maximum permitted residential density within a redevelopment plan shall consider the following:
 - i. Inability to remediate a portion of the subject site to NJDEP residential standards;
 - ii. Insufficient water or sewer capacity, as documented by the agency with jurisdiction;
 - iii. The need to foster or sustain a viable mixed-use neighborhood in accordance with sound planning principles; and
 - iv. Adverse impacts on the surrounding transportation network.

The required number of affordable units in a redevelopment area shall be calculated as designated by law or COAH regulation or resolution.

4. For residential development permitted in any other zone, the maximum permitted density shall be as established for the Planned Residential zone in 2. above.
 5. The minimum parking requirement for affordable units shall be one space for each affordable unit. In multiple family dwelling developments, affordable units shall not be required to provide visitor parking.
- (c) A developer may request an increase to the maximum permitted densities listed in Paragraph (b). The developer shall provide written justification regarding the request for proposed density increases. The NJMC will evaluate such requests based upon sound planning principles and may allow such requests on a case-by-case basis. A recommendation regarding the increase in residential densities shall be prepared by the Review Team and presented to the Board of Commissioners for final action.
- (d) A density bonus of three dwelling units shall be permitted for every 25 affordable units reserved for renter households, exclusive of any incentive density permitted in accordance with Paragraph (b).
- (e) The developer is encouraged to work with the subject municipality to create units available to very-low income households. COAH's rule in N.J.A.C. 5:97-8.8 authorizes municipalities to utilize development fees to provide affordability assistance for very low income households.
- (f) The affordable dwelling units within an inclusionary development shall be built in accordance with the phasing schedule required by law or by COAH requirement or resolution.
- (g) The non-residential components of a mixed-use development shall be built in accordance with a phasing schedule submitted for review and approval by the NJMC.
- (h) The layout and design of the development shall be as follows:
1. Affordable housing units shall not be concentrated in one location within the development, but shall be dispersed throughout the development.
 2. The affordable units shall be architecturally similar to the market-rate units within the development.

3. The first floor of all affordable townhome dwelling units and all other affordable multistory dwelling units shall comply with N.J.A.C. 5:97-3.14, Accessible and adaptable affordable units.
- (i) The administration of affordable housing units provided in accordance with these policies shall conform to the requirements of COAH's substantive rules, N.J.A.C. 5:97, and the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80, as amended and supplemented. Administrative requirements include, but are not necessarily limited to, the following:
1. Affordable units shall utilize the same heating source as market-rate units within the inclusionary development and have access to all community amenities available to market-rate units and subsidized in whole by association fees.
 2. Additional requirements include, but are not limited to, controls on affordability, regional income limits, proportion of units allocated to persons of low- or moderate-income, heating sources, maximum rent and/or sales prices, affordability average, bedroom distribution, and affirmative marketing.
 3. The municipality shall be responsible for such administration, and may designate the Housing Affordability Service (HAS) in the New Jersey Housing and Mortgage Finance Agency (HMFA) or other COAH-approved entity to administer the affordable units for the duration of the required administration period.
 - i. The cost and expense of such administration may be imposed upon the developer pursuant to the terms and conditions of a duly adopted municipal ordinance.
 - ii. The municipality shall enter into a contract with the designated COAH-approved entity. If the municipality has not petitioned for substantive certification or has not received a judgment of compliance, the contract shall be submitted to the NJMC for review and approval to ensure compliance with this paragraph.
 - iii. The entity shall assume the responsibilities of the administrative agent set forth by the HMFA in N.J.A.C. 5:80-26.
 - iv. Funds from the sale of affordable units with extinguished affordability controls shall be deposited into the municipality's escrow account established in accordance with Section VIII.

VII. Affordable Housing Development Fees

- (a) Residential and non-residential development shall be subject to any applicable laws and/or COAH regulations or resolutions regarding development fees.

VIII. Affordable Housing Trust Fund

- (a) All payments in lieu of constructing affordable housing units on site, collected by the NJMC in accordance with these interim policies, shall be deposited in an interest-bearing escrow account established by NJMC for the municipality in which the units would have been constructed.
- (b) The escrow accounts shall be created pursuant to the terms of a three-party escrow agreement between each constituent municipality, the financial institution, and the NJMC.
- (c) The NJMC shall include in future rulemaking provisions regarding the release of these funds to a municipality for the purpose of creating affordable housing.
 - 1. Pursuant to COAH's rule in N.J.A.C. 5:97-8.13, the municipality may be subject to enforcement action by COAH for the expenditure of funds on activities not approved by COAH or other good cause demonstrating that the funds are not being used for the approved purpose.

IX. Municipal Housing Elements and Fair Share Plans

- (a) A municipality shall submit copies of documents regarding its affordable housing programs and policies as follows:
 - 1. A copy of its adopted Housing Element and Fair Share Plan, including any amendments, shall be submitted to the NJMC by the municipality at the same time it petitions or re-petitions COAH for substantive certification or for an amendment to such certification.
 - i. The NJMC shall review the Housing Element and Fair Share Plan and submit a written report of its findings regarding lands within the Hackensack Meadowlands District to COAH within 45 days of the municipality's publication of the notice of its petition or re-petition. Such report may comment upon any aspects of the Housing Element and Fair Share Plan that the NJMC deems appropriate, including but not limited to the following:
 - 1) The municipality's growth share projection with respect to lands located within the District;
 - 2) Any request for an adjustment to the Remaining Prior Round Obligation where the request is based, in whole or in part, upon the lack of available land within the District;
 - 3) The means by which the municipality proposes to meet its fair share obligation, including the appropriateness of locations, types, and densities of development proposed for housing within the

District; and

- 4) The need for any amendments to the NJMC's rules to enable the municipality to implement its fair share housing plan.
2. A municipality that has substantive certification or a judgment of compliance shall provide the NJMC with copies of all monitoring reports and relevant correspondence submitted to COAH or the Superior Court at the same time such documentation is submitted to these parties.

X. Notice Requirements

The NJMC staff shall notify a municipality of any zoning certificate and/or site suitability application that will affect that municipality under these interim policies.