

Interim Policies Governing Affordable Housing Development in the Meadowlands District

Effective July 24, 2008

Revised October 2, 2008

Last revised October 21, 2008

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 new affordable housing rules were 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 the NJMC proposes new zoning regulations governing affordable housing or these policies are withdrawn or rescinded by Commission action or court order, whichever 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 adoption of any petition to amend the Official Zoning Map in accordance with N.J.A.C. 19:3-1 (Rulemaking). The NJMC shall not adopt new 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 shacks, 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.

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; or
 8. Heavy Industrial.
- (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 shall be deemed suitable for housing pursuant to any of the following:
 - 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. Non-residential development of any site determined to be suitable for housing shall be halted until the NJMC proposes new zoning regulations governing affordable housing or 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 VI, 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) Residential development including five (5) or more dwelling units shall provide a minimum of one affordable housing unit within the development for every four market-rate dwelling units.
1. When this calculation 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 to the Commission 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 established by COAH is \$180,267 and may be revised by COAH periodically. The calculated obligation shall be rounded to the nearest hundredth decimal place and multiplied by the per-unit subsidy rate.
 - ii. 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.
 - iii. 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.
 3. Non-residential development shall generally be limited to accessory uses intended to contribute to the comfort, convenience, or necessity of residents.
 - i. If the residential development meets the maximum permitted density in Paragraph (b), the site may include one or more additional principal uses, as permitted in the zone.
- (b) Maximum permitted densities are established as incentives for providing affordable housing within an inclusionary development, or residential development in which all units are reserved as affordable, as follows:
1. In the Low Density Residential zone, the maximum permitted density shall be increased from 10 dwelling units per acre to 13 dwelling units per acre.

2. In the Planned Residential zone, the maximum permitted density shall be increased from 25 dwelling units per acre to 32 dwelling units per acre.
 3. For residential development permitted in other zones, the maximum permitted density shall be established as 32 dwelling units per acre.
 4. 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 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).
- (d) 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.
- (e) The affordable dwelling units within an inclusionary development shall be built in accordance with the phasing schedule in Table 1 below:

TABLE 1

Phasing of Affordable Housing Units

<u>Percentage of Market-rate Units Completed</u>	<u>Minimum Percentage of Low- and Moderate-Income Units Completed</u>
25	0
25 + 1 unit	10
50	50
75	75
90	100

- (f) 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 townhome dwelling units and all other multistory dwelling units shall comply with N.J.A.C. 5:97-3.14, Accessible and adaptable

affordable units, provided the units are included in a municipal Fair Share Plan.

4. The following minimum floor area per affordable housing unit, with the exception of units provided in assisted living facilities, shall be provided:

<u>Unit Size</u>	<u>Minimum Floor Area</u>
studio	550 square feet
one bedroom	600 square feet
two bedrooms	850 square feet
three bedrooms	1,150 square feet
four bedrooms	1,250 square feet

5. At least one bedroom shall contain a minimum floor area of 150 square feet and each additional bedroom shall contain a minimum floor area of 100 square feet.
 6. The minimum sizes in 4. and 5. above exclude exterior hallways, garages, common space, and unfinished space.
- (g) 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 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) Non-residential development shall be subject to a development fee assessed and collected by the municipality in accordance with Assembly Bill No. 500/Senate Bill No. 1783.
- (b) The NJMC shall require development fees for residential development limited to three (3) or four (4) market-rate dwelling units as follows:
 1. The amount of the payment shall be calculated at one and one-half (1½) percent of the equalized assessed value of land and improvements.
 2. The NJMC shall calculate and collect the fee on behalf of the constituent municipality.
 - i. The NJMC shall not issue a temporary or final certificate of completion or occupancy certification for the development until such payment is received in full or until a guaranteed payment plan is effectuated.
 - ii. For such development in a municipality that has an adopted development fee ordinance, a development fee 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 certificate of completion or occupancy certification.

VIII. Affordable Housing Trust Fund

- (a) All development fees and 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.