

Amendments to the Coastal Zone Management Rules

The Rules of the Game Are Changing Again

By Jeffrey R. Rich, Esquire

On June 7, 2005, the Commissioner of the New Jersey Department of Envi-

ronmental Protection (DEP), Bradley M. Campbell, announced several amendments

to the Coastal Zone Management, Rules regarding the development of coastal centers in New Jersey.

BACKGROUND ON THE COASTAL ZONE MANAGEMENT RULES

In 1972, the Federal Coastal Zone Management Act was passed, which allowed New Jersey to create the New Jersey Coastal Management Program. This program, through a series of laws and regulations, brought together the Wetlands Act of 1970, the Coastal Area Facility Review Act of 1973 (CAFRA), the Waterfront Development Law, the Public Trust Doctrine and the regulatory activities of the New Jersey Meadowlands Commission.

One of the more important aspects of CAFRA is that it grants broad authority to the DEP to protect the environment, as well as to regulate areas along the coast for the benefit of all. Any directives found in CAFRA are generally liberally construed in order to permit the DEP to protect the environment to the very best of its lawful abilities.

To accommodate the ever-changing needs of the environment, the Coastal Management Program has also made several changes over the years. These changes have come in the form of, among other things, amendments to the Coastal Zone Management Rules.

THE EXPIRED RULES

Under the recently expired rules, if an area is designated a "coastal center," there are limitations on the amount of impervious cover permitted and requirements for the amount of vegetative cover. These rules were designed to establish the standards for appropriate development and protection of natural resources in the coastal areas with their inherent environ-

mental sensitivities. Previous Coastal Zone Management Rules governing the centers expired on February 7, 2005. The expiration caused potential problems for municipalities already engaged in the approval process with the Department of Community Affairs, Office of Smart Growth, for their coastal center plans, creating a situation where the rules and regulations governing the process were no longer clear.

THE PROPOSED NEW RULES

Although the exact language of the proposed amendments has yet to be announced, at the time that DEP releases the new rules, a notice of proposal will be printed in the New Jersey Register, followed by a public comment period. After the comment period, a notice of adoption will be filed and the rules will take effect.

The amendments announced by Commissioner Campbell would specifically aid those municipalities, which already began the state planning process before July 5, as well as those municipalities that commence the process before August 2. For these municipalities, the amendments will re-establish coastal centers. Towns that contain coastal centers will be given five years to get their plans approved by the Office of Smart Growth. If a municipality establishes a coastal center under the proposed amendments to the Coastal Zone Management Rules, then the center will remain effective until March 15, 2007, or until approved as a CAFRA center.

The amendments have several purposes. According to Commissioner Bradley, "the proposed amendment provides an incentive for municipalities to engage in the State Planning process, which considers growth, population trends and other issues that impact our precious coastal environment. The changes provide a compromise toward protecting the state's coastal resources while accommodating future development needs." The proposed rules also evidence DEP's efforts to balance the public's right

of access to coastal resources, with the DEP's legislative mandate to preserve such resources for future generations.

As with any new regulatory program or any amendment to rules affecting development, builders are again challenged to plan and design projects that are sensitive to the environment, and to those who seek to protect and/or use its resources.

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