

OTHER AGENCIES

(a)

NEW JERSEY MEADOWLANDS COMMISSION

District Zoning Regulations Affordable Housing Initiatives

Proposed Amendments: N.J.A.C. 19:4-5.2, 8.4 and 11.1

Proposed New Rules: N.J.A.C. 19:3-6 and 19:4-11.7 and 12

Proposed Repeal: N.J.A.C. 19:4-3.8

Authorized By: New Jersey Meadowlands Commission, Robert R. Ceberio, Secretary.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-311.

A **public hearing** on this matter will be held on Tuesday, October 17, 2006 on or after 10:00 A.M. at the following location:

New Jersey Meadowlands Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by the close of business on November 17, 2006 to:

Ileana Kafrouni, P.P., AICP
Director of Land Use Management
New Jersey Meadowlands Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

It is requested (but not required) that anyone submitting written comments also include a disk containing an electronic version, preferably in Microsoft Word. Interested persons may obtain a copy of the proposed amendments through the following methods:

1. The proposed amendments may be downloaded electronically from the Commission's website. They may be accessed at www.njmeadowlands.gov.

2. The proposed amendments may be inspected during normal office hours at the Commission's Public Information Center at One DeKorte Park Plaza in Lyndhurst.

The agency proposal follows:

Summary

A major policy of the New Jersey Meadowlands Commission Master Plan, adopted by the New Jersey Meadowlands Commission (NJMC) in January 2004, is to spur the production of affordable housing in the Hackensack Meadowlands District and the greater region. Rules promulgated in response to the NJMC Master Plan became effective on February 17, 2004, including language governing affordable housing at N.J.A.C. 19:4-3.8.

The rules were adopted, however, prior to the new rules of the New Jersey Council on Affordable Housing (COAH) becoming effective on December 20, 2004. These rules represent a comprehensive overhaul of the COAH system and use a "growth share" approach to determine municipal affordable housing obligations that are consistent with sound land use planning and smart growth. As part of the changes under the rules, municipalities are responsible for providing one affordable residential unit for every eight market-rate residential units generated. Additionally, one unit of affordable housing is required for every 25 jobs that are created, as measured by square feet of new or expanded non-residential construction according to use group.

The NJMC is a regional land use authority superseding the zoning jurisdiction of portions of 14 municipalities in Bergen and Hudson counties; however, the NJMC is not subject to COAH rules. As such, District municipalities accrue growth-share obligations from development approved in the District by the NJMC. In order to assist municipalities with meeting their growth share requirements, the NJMC has offered technical assistance and funding to District municipalities to prepare their

third-round housing plans. Still, the NJMC seeks to be consistent with the intent of COAH rules and further assist municipalities in meeting their growth share requirements.

For publication on December 5, 2005, NJMC staff filed a notice of proposal with the Office of Administrative Law for publication in the New Jersey Register in order to obtain public input on proposed amendments to NJMC rules. See 37 N.J.R. 4529(a). The proposed amendments included a requirement that all residential development shall provide its fair share of affordable housing on-site pursuant to municipal growth share calculations. A public hearing was held on January 10, 2006. During the public comment period, which ended February 3, 2006, the Commission received several written comments and public statements, particularly with respect to the need to address the growth share obligation to municipalities generated by non-residential development.

Rather than adopt the amendments proposed on December 5, 2005, and follow with a separate notice of proposal to address non-residential growth share obligations, the NJMC seeks to avoid incremental rulemaking by proposing a single, comprehensive housing rule. The NJMC staff was authorized by the NJMC Board of Commissioners on July 10, 2006, to proceed with the rulemaking proposal. The proposal is intended to facilitate the capacity of the municipalities of the Hackensack Meadowlands District to meet their total affordable housing obligations in accordance with COAH's requirements, as governed by its rules at N.J.A.C. 5:94 and 5:95 and the New Jersey Housing and Mortgage Finance Agency (HMFA)'s rules at N.J.A.C. 5:80-26, relied upon by COAH pursuant to N.J.A.C. 5:94-7. The proposal reflects a collaborative endeavor between NJMC and COAH staff.

A summary of the proposed new rules, amendments, and repeal follows:

N.J.A.C. 19:3-6 Affordable Housing

This subchapter is proposed to promote the production of affordable housing units in the District's constituent municipalities. The proposal contains rules particular to the administrative procedures of the NJMC with respect to affordable housing. A detailed description of each section is provided as follows:

N.J.A.C. 19:3-6.1 Intent and purpose: This section sets forth the purpose of the subchapter by specifying that the NJMC will facilitate the ability of the constituent municipalities to meet their affordable housing obligations. The NJMC will do so in a manner consistent with requirements set forth by COAH in its rules at N.J.A.C. 5:94 and 5:95 and the HMFA's rules at N.J.A.C. 5:80-26.

N.J.A.C. 19:3-6.2 Words and phrases defined: This section establishes that the words used in the subchapter shall be as defined by the NJMC's regulations in N.J.A.C. 19:4-2.1 or by COAH's regulations in N.J.A.C. 5:94-1.4.

N.J.A.C. 19:3-6.3 Municipal housing elements and fair share plans: Subsection (a) provides that constituent municipalities are required to submit to the NJMC copies of adopted Housing Elements and Fair Share Plans, including amendments. Copies are to be provided at the same time that the municipalities petition or re-petition COAH for substantive certification or petition or re-petition COAH to amend the substantive certification.

Subsection (b) provides that the NJMC will review each Housing Element and Fair Share Plan it receives pursuant to subsection (a). The NJMC will submit a written report of its findings to COAH within 45 days of the publication of the municipality's notice of petition or re-petition for substantive certification. The findings shall pertain to the municipality's lands within the Hackensack Meadowlands District and may encompass any aspects of the Housing Element and Fair Share Plan that the NJMC considers appropriate.

Paragraph (b)1 provides that the NJMC's report to COAH may comment upon the municipality's growth share projection with respect to lands located within the District.

Paragraph (b)2 states that the NJMC may comment upon any request to COAH by the municipality to adjust its Remaining Prior Round Obligation where the lack of available land within the District is a basis for the request.

Paragraph (b)3 sets forth that the NJMC may also make comment upon the obligation by which the municipality proposes to meet its fair share housing obligation, including the strategies proposed for housing within the District.

Paragraph (b)4 provides that the NJMC may comment upon the need for any amendments to the NJMC's regulations that would be required for the municipality to implement its Fair Share Plan.

Subsection (c) requires constituent municipalities to provide the NJMC with copies of monitoring reports and relevant correspondence submitted to COAH or the Superior Court. The documentation shall be provided at the same time it is submitted to these parties.

N.J.A.C. 19:3-6.4 Affordable housing trust fund: This section authorizes an affordable housing trust fund in which the NJMC would deposit payments authorized to be made by applicants for zoning certificates made in lieu of constructing affordable housing units to meet the growth share obligation generated by the development. Additionally, the affordable housing trust fund would serve as the depository for funds associated with affordable units with extinguished affordability controls that are located in municipalities that do not have substantive certification or a judgment of compliance.

Subsection (a) provides that the funds shall be deposited in interest-bearing escrow accounts. A separate account shall be maintained for each constituent municipality.

Subsection (b) sets forth that the NJMC shall establish and maintain the escrow accounts on behalf of each constituent municipality.

Subsection (c) provides that the NJMC will establish a three-party escrow agreement between each of its constituent municipalities, the financial institution, and the NJMC that addresses the NJMC's collection and disbursement of funds.

Subsection (d) states the conditions under which the NJMC will release the escrowed funds, including accrued interest, to the municipality.

Paragraph (d)1 requires as a condition that the municipality petition COAH for substantive certification or receive a judgment of compliance from the Superior Court.

Paragraph (d)2 requires that the three parties must have entered the escrow agreement.

Subsection (e) provides for the prompt transfer of funds from the NJMC affordable housing trust fund to individual municipal affordable housing trust funds once those municipalities satisfy the requirements at subsection (d).

Paragraph (e)1 requires a municipality receiving funds from the NJMC to deposit the funds into its own affordable housing trust fund. The municipality must administer and expend the funds to implement its Fair Share Plan in accordance with N.J.A.C. 19:3 and COAH requirements.

Subsection (f) establishes the circumstances under which the NJMC will redirect funds held in the affordable housing trust fund on behalf of a municipality.

Paragraph (f)1 authorizes the NJMC to redirect funds when a municipality does not petition COAH for substantive certification within two years of the effective date of the proposed subchapter.

Paragraph (f)2 provides for the NJMC to redirect funds when the Superior Court revokes a municipality's judgment of compliance, and the Court has not required COAH's oversight.

Subsection (g) authorizes the NJMC to designate entities to receive funds that it redirects in subsection (f).

Paragraph (g)1 provides for the NJMC to select entities by soliciting proposals and statements of qualifications from private and public sector and non-profit agencies.

Paragraph (g)2 requires the redirected funds to be used to create affordable housing within the District's constituent municipalities.

Subparagraph (g)2i requires the redirected funds to be assigned, to the extent practicable, to projects within the municipality that generated the revenues. Otherwise, funds would be utilized in another constituent municipality.

Subparagraph (g)2ii requires projects involving new construction to be built in accordance with an agreement between the developer and the NJMC.

N.J.A.C. 19:3-6.5 Municipal request for rezoning: This section authorizes municipalities to petition the NJMC to rezone land for the

purpose of meeting their affordable housing obligations, as provided in existing N.J.A.C. 19:4-3.8, proposed to be repealed.

N.J.A.C. 19:4 District Zoning Regulations

N.J.A.C. 19:4-3.8 Affordable housing: This section is proposed to be repealed, as its purposes are fulfilled by provisions of the proposed new rules and amendments. The section was created by the NJMC's regulations promulgated in response to the NJMC Master Plan, which became effective on February 17, 2004. The section was included to acknowledge the need for affordable housing in and around the Meadowlands area. This proposal is likewise based upon the acknowledgement of such need.

The existing rule was also intended to offer additional options for municipalities within the District to meet their affordable housing allocations, including the option of requesting the rezoning of properties that may be suitable for affordable housing in the District. The language regarding municipal requests for rezoning is substantially similar to the new rule created under N.J.A.C. 19:3-6.5 to expand the administrative procedures of the NJMC with respect to affordable housing.

N.J.A.C. 19:5 Districts, Uses and Standards

N.J.A.C. 19:5-2 General provisions: Paragraph (a)8 is added to this section to clarify that all development in the District that includes affordable housing is subject to the bulk regulations in N.J.A.C. 19:4-12.8, the density limitations in N.J.A.C. 19:4-12.9, and the layout and design requirements set forth in N.J.A.C. 19:4-12.11. Such development may also be granted density bonuses pursuant to N.J.A.C. 19:4-12.10 if the pertinent requirements of that section are met.

N.J.A.C. 19:4-8 Site Plan Requirements

N.J.A.C. 19:4-8.4 Parking and loading requirements: This section is proposed to be amended at item 26 in Table 8-1 to modify the parking requirements for units reserved as affordable in multiple family dwellings. The existing NJMC rule require multiple family dwellings to provide two spaces per unit and one visitor space per four units. The proposed amended rule retains the requirement for market-rate units; however, the proposed amendment reduces the requirement by one parking space for each unit reserved as affordable as a potential cost-saving feature intended to encourage the development of affordable housing.

N.J.A.C. 19:4-11 Fee Schedule

N.J.A.C. 19:4-11.1 General provisions: This section is proposed to be amended to specify that the NJMC will waive the application fee customarily required for residential development or the residential portion of a mixed-use development where all of the proposed housing units would be reserved as affordable units to help lessen the cost of developing affordable housing.

N.J.A.C. 19:4-11.7 Affordable housing: This section is a new rule to establish payments in lieu of constructing affordable housing units in the Meadowlands District and the procedures for collecting the payments. A developer may make a payment in lieu of construction as an alternative to constructing the project's proportional growth share obligation of affordable housing units within the development. These payments would be made directly to the NJMC on behalf of the subject municipality and deposited in the affordable housing trust fund proposed in N.J.A.C. 19:3-6.4, Affordable housing trust funds. Developers may elect to make such payments under any of the following circumstances:

1. The development is located within one of the zones or redevelopment areas that is exempt from providing for the affordable obligation on-site, based on the provisions of proposed subsection (b) of N.J.A.C. 19:4-12.4, Exemptions;

2. The NJMC has determined that a site is not suitable to include affordable housing, based on proposed N.J.A.C. 19:4-12.6, Non-residential site suitability; or

3. The NJMC has granted a project, at the request of the applicant or affected municipality, an inclusionary housing waiver from providing the affordable obligation on-site in accordance. The NJMC may grant the waivers pursuant to proposed N.J.A.C. 19:4-12.13, Inclusionary housing waivers.

Subsection (a) provides the procedures for determining and collecting the payments.

Paragraph (a)1 sets forth the payments as rates per affordable unit. This paragraph provides that the payments shall be calculated in accordance with the per unit rates appearing in Table 11-1. A fractional obligation shall be rounded to nearest hundredth decimal place and multiplied by the per-unit payment rate. For example, an obligation calculated as 1.057 units would be rounded to 1.06 units and multiplied by the rate that is assigned to the subject municipality.

The rulemaking proposal seeks to assign a discrete payment in lieu of construction to development within each municipality, because land values are generally perceived as varying among the District's municipalities. In brief, the payments are based upon the summation of estimated land value and development costs associated with a typical family unit in an affordable housing development, reduced by proceeds anticipated from the sale of the unit or the capitalization of rental income. A fuller description of the calculations follows:

Residential land value was established by an appraiser for each of the District's 14 constituent municipalities. The land values were based on hypothetical land parcels and were not specific to any one land parcel. To establish land value per housing unit, the assumption was made that the overall density of the development would be 25 units per acre, which corresponds to the density of the NJMC's Planned Residential zone.

To establish development costs, the NJMC assumed that a development with affordable units located in the District's municipalities would commonly take place in a multiple family dwelling with an elevator. Additional assumptions regarding development hard costs, related soft costs, and the developer's fee were drawn from the cost criteria included in a rulemaking proposal by the New Jersey Department of Community Affairs (DCA), this is published elsewhere in this issue of the New Jersey Register. The proposal seeks revisions to DCA's rules at N.J.A.C. 5:43 regarding the Neighborhood Preservation Balanced Housing Program. To arrive at unit costs, a typical unit was calculated to include 920 square feet based on the bedroom distribution criteria outlined in the HMFA's rule at N.J.A.C. 5:80-26.3, commonly referred to as the Uniform Housing Affordability Controls.

Finally, the land value for each municipality and the development costs have been offset by the estimated proceeds from the sale of the affordable unit or the capitalization of rental income, resulting in the payment amount.

The NJMC would review the formula periodically and propose adjustments to the payment schedule as warranted by changing conditions in the real estate market and construction costs or to reflect updated cost containment parameters associated with the Neighborhood Preservation Balanced Housing Program. In accordance with the "sunset" requirements of the Administrative Procedures Act, the NJMC's rules must be readopted every five years. Chapters 3 and 4, which will include these proposed amendments and new rules, are scheduled to expire on February 17, 2009, and must be readopted prior to such time. The NJMC must examine the validity of its rules during the re Adoption process. Therefore, the NJMC must reevaluate the payments in lieu at least every five years, or sooner, if deemed necessary.

Paragraph (a)2 states that submission of the payment is a condition of any zoning certificate issued by the NJMC.

Paragraph (a)3 requires the entire payment to be received prior to the NJMC issuing a certificate of completion or occupancy.

N.J.A.C. 19:4-12 Affordable Housing

This subchapter is created to establish affordable housing requirements associated with new development in the District. It sets forth provisions regarding the number of affordable units that an application must satisfy and the requirements for the obligation to be satisfied. The subchapter also includes provisions that ensure the continuing affordability of units, particularly units developed in municipalities that have not petitioned COAH for substantive certification or received a court judgment of compliance. A detailed description of each section in this subchapter is provided as follows:

N.J.A.C. 19:4-12.1 Purpose: This section states the purpose of the subchapter, which is to establish methods by which the NJMC shall assist the municipalities of the District with meeting their fair share housing

obligations and ensuring that Uniform Housing Affordability Controls are put into place.

N.J.A.C. 19:4-12.2 Words and phrases defined: This section clarifies that the terms throughout the subchapter are used in accordance with the definitions used in the rules of the NJMC or COAH, as applicable.

N.J.A.C. 19:4-12.3 Applicability: This section details how the rules of the subchapter shall be applied.

Subsection (a) establishes that the provisions apply to zoning certificate applications submitted to the NJMC, except where exempted.

Paragraph (a)1 states that any zoning certificate issued by the NJMC must include compliance with this subchapter as a condition of approval.

Paragraph (a)2 provides that the NJMC will not issue a certificate of completion and/or an occupancy certification unless the application complies with this subchapter and the proposed rule in N.J.A.C. 19:4-11.7, Affordable housing.

N.J.A.C. 19:4-12.4 Exemptions: This section sets forth exemptions from the requirements of the subchapter.

Subsection (a) specifies types of development that are exempt.

Paragraph (a)1 states that development that only involves one or two market-rate dwelling units is exempt.

Paragraph (a)2 states that development proposed by a municipal government is exempt. Although municipal facilities such as schools and libraries generate affordable housing obligations, this provision confers additional flexibility to constituent municipalities in meeting their affordable housing obligations.

Paragraph (a)3 exempts development that would not produce an affordable housing obligation in accordance with COAH's rules.

Subsection (b) exempts development located in certain zones or redevelopment areas from satisfying the growth share obligation within the development. Residential uses are deemed unsuitable for these zones or redevelopment areas on the basis of their purposes and/or permitted uses. For example, the Environmental Conservation zone is intended to preserve and enhance the ecological values of wetlands, open water, and adjacent uplands within the District. Residential uses in the Environmental Conservation zone would discourage or interfere with the purpose of this zone. The purpose of the Heavy Industrial zone, which is another zone exempt from meeting the growth share obligations within the development, is to accommodate intensive industrial, utility, and commercial uses that are not compatible with residential uses.

N.J.A.C. 19:4-12.5 Growth share obligation: This section sets forth the methodology for calculating the growth share obligation associated with new development.

Subsection (a) clarifies that applicants are required to satisfy the growth share obligation associated with their development in accordance with the subchapter, unless the development is exempt in N.J.A.C. 19:4-12.4, Exemptions.

Subsection (b) states the specific methods for determining the number of affordable units that development shall provide. The requirements are consistent with the growth share requirements specified by COAH in its rules at N.J.A.C. 5:94.

Paragraph (b)1 requires that development include one affordable unit for every eight market-rate units.

Paragraph (b)2 requires that non-residential development include one affordable unit for every 25 new jobs created. COAH's rules at N.J.A.C. 5:94 base job creation upon the square feet of new or expanded construction according to use group. The gross number of square feet of non-residential space is divided by the associated square footage by use group. For example, 100,000 square feet of retail space would be divided by 25,000 square feet to determine the development's affordable housing obligation as four units. Appendix E of COAH's substantive rules at N.J.A.C. 5:94 provides additional information.

Subparagraph (b)2i clarifies that the growth share obligation associated with non-residential development is required to be addressed within the development. For development not otherwise exempted from the provisions of this subchapter, exceptions to this requirement are made where 1) the NJMC staff deems the site as unsuitable; or 2) the Board of Commissioners grants the applicant or affected municipality an inclusionary housing waiver.

Subsection (c) clarifies the methodology for calculating the growth share obligation for mixed use development. Where development includes

both residential and non-residential uses, the calculation is based on the sum of the obligations assigned to each use.

Subsection (d) states that the calculation of growth share resulting in a fraction of a unit shall be rounded to the nearest hundredth decimal place. The project may satisfy a fractional obligation of less than one unit or a fractional obligation that falls between two whole numbers by providing for one affordable unit or by making a pro-rated payment in lieu of construction. By way of example, a professional office containing 12,000 square feet would produce an affordable obligation of 1.44 units, based on the standard of three jobs per 1,000 square feet for development assigned to use group B, office buildings. The applicant may satisfy the 1.44 units of obligation by providing two affordable units within the development. The applicant may, alternatively, provide for one affordable unit within the development and make a payment in lieu of construction for the fractional obligation of 0.44 units. The payment in lieu of construction is based on multiplying the payment per unit applicable to the municipality by 0.44, consistent with the proposed rule at N.J.A.C. 19:4-11.7, Affordable housing.

N.J.A.C. 19:4-12.6 Non-residential site suitability: This section establishes criteria by which the NJMC staff will determine whether a site being developed with non-residential uses is suitable for the development of affordable housing to meet the growth share obligation generated by the non-residential uses.

Subsection (a) lists the criteria, any of which may establish the site as being unsuitable for affordable housing. The criteria include any physical limitations that preclude development of the required housing units; incompatibility of residential development with the proposed use of the site; the environmental impacts of former and existing land uses, either on the site or in the vicinity of the site; non-conformance with COAH's site suitability requirements; and the site being otherwise unsuitable for residential use in accordance with sound planning principles.

Subsection (b) clarifies that, where the NJMC staff determines that a development is unsuitable for residential use, the applicant is still responsible for addressing the growth share obligation to result from the proposed development. The alternative methods available to the applicant are listed in N.J.A.C. 19:4-12.14.

N.J.A.C. 19:4-12.7 Permitted locations for affordable housing: This section sets forth the zones and redevelopment areas where affordable housing must be provided within a development to satisfy the growth share obligation associated with the development. The types of development exempted from this requirement are set forth in proposed N.J.A.C. 19:4-12.4.

N.J.A.C. 19:4-12.8 Bulk regulations: This section sets forth the bulk regulations for development that includes affordable housing units.

Subsection (a) clarifies that the bulk requirements for the zone pertain to the entire development, except where provided in this section.

Subsection (b) limits, in specified zones, the floor area associated with residential use in a mixed use development to 50 percent of the total floor area. The limitation is intended to retain the existing purposes of these zones.

N.J.A.C. 19:4-12.9 Residential density: This section establishes the maximum permitted density for zones with no residential density requirements as 25 dwelling units per acre. The maximum density is determined prior to the calculation of any bonuses the development may be provided in the proposal in N.J.A.C. 19:4-12.10. The total development, including residential and non-residential uses, would be subject to any Floor Area Ratio limitation for the zone.

N.J.A.C. 19:4-12.10 Density bonuses: This section provides incentive zoning in the form of density bonuses to promote the development of affordable units.

Subsection (a) provides a density bonus for development in which a minimum of 20 percent of the units would be affordable. Projects that are 100 percent affordable are among those eligible to receive the bonus, because they meet the 20 percent minimum requirement.

Paragraph (a)1 authorizes development in zones with floor area ratio limits to receive a floor area ratio increase of up to 0.25.

Paragraph (a)2 authorizes development in zones with residential density limits to receive an increase in the permitted residential density of up to three dwelling units per acre.

Subsection (b) permits a bonus of three dwelling units per acre for every 25 affordable units reserved for renter households. Development may receive this bonus in addition to the density bonus under subsection (a).

N.J.A.C. 19:4-12.11 Layout and design: This section specifies standards regarding layout and design of affordable units within an inclusionary development.

Subsection (a) states the layout and design requirements.

Paragraph (a)1 requires the affordable units to be integrated with the market rate units by being dispersed throughout the development.

Paragraph (a)2 requires the units to be similar in external design to the market-rate units.

Subsection (b) sets forth requirements regarding the minimum floor area for each affordable housing unit according to bedroom size. A unit containing one bedroom unit must contain at least 700 square feet. A two-bedroom unit must contain a minimum of 850 square feet. A three-bedroom unit must contain at least 1,150 square feet. A four-bedroom unit must contain at least 1,250 square feet. Units provided in assisted living facilities are exempt from the requirements of this subsection.

Subsection (c) requires at least one bedroom in an affordable unit to contain a minimum of 140 square feet. Each additional bedroom in the affordable unit must contain at least 90 square feet.

N.J.A.C. 19:4-12.12 Administration of affordable units: This section contains the administrative requirements for affordable units provided to meet affordable housing obligations in accordance with this subchapter.

Subsection (a) requires the administration of the affordable units to comply with COAH's substantive rules at N.J.A.C. 5:94 and the HMFA's Uniform Housing Affordability Controls at N.J.A.C. 5:80-26, relied upon by COAH pursuant to N.J.A.C. 5:94-7. These provisions include, but are not limited to, the occupancy standards, control periods and pricing restrictions for ownership units, control periods and restrictions on rents for rental units, determining that restricted units are occupied by properly sized households and appropriate low- or moderate-income levels, and affirmative marketing of affordable units. Such provisions are necessary to ensure adequate administration of the affordable units.

Subsection (b) establishes that the municipality is responsible for the administration of affordable units. The municipality is permitted to designate an entity approved by COAH to administer the affordable units for the time in which the units are subject to affordability controls. The municipality may impose the cost and expense of administering the affordability controls upon the developer.

Paragraph (b)1 requires the municipality to enter into a contract with the COAH-approved entity.

Paragraph (b)2 requires the entity to assume the responsibilities of the administrative agent, as designated by the HMFA pursuant to N.J.A.C. 5:80-26.14, Administrative agent. The primary purpose of the administrative agent is to ensure that the restricted units are sold or rented, as applicable, only to low- and moderate-income households.

Subsection (c) sets forth additional requirements for the administration of units within District municipalities that have not petitioned COAH for substantive certification or have not received a judgment of compliance.

Paragraph (c)1 requires the contract under subsection (b) to be submitted to the NJMC for review and approval to ensure compliance with the requirements of this section.

Paragraph (c)2 requires that funds from the sale of units whose affordability controls are extinguished shall be deposited in the NJMC's affordable housing trust fund. These funds would be disbursed from the trust fund in accordance with the proposed rule in N.J.A.C. 19:3-6.4, Affordable Housing Trust Fund.

N.J.A.C. 19:4-12.13 Inclusionary housing waivers: This section provides for the ability for the NJMC's Board of Commissioners to grant an inclusionary development waiver to the requirement that development satisfy the growth share obligation within the development.

Subsection (a) clarifies that the provisions apply to development that is not otherwise exempt from satisfying the growth share obligation within the site. The waiver may be sought by the applicant or the affected municipality.

Subsection (b) sets forth the procedure for the waiver.

Paragraph (b)1 requires that the request for the waiver must be submitted in writing to the NJMC, to establish a written record of the matter. This paragraph specifies information that the party requesting the waiver must include in the request.

Subparagraph (b)1i requires that the request shall specify the regulation from which the waiver is requested. This subparagraph also clarifies that the Board of Commissioners shall not consider waivers to COAH's rules.

Subparagraph (b)1ii requires that the request shall document that a waiver shall not result in a threat to the public health, safety, and/or order.

Subparagraph (b)1iii requires that an applicant seeking a waiver must state which alternative method or methods of compliance it shall provide pursuant to the methods listed in the proposal in N.J.A.C. 19:4-12.14, Alternative methods of compliance.

Subparagraph (b)1iv requires that a municipality seeking a waiver must satisfactorily demonstrate that a waiver would not impair its ability to meet its fair share housing obligation within a reasonable time-frame.

Subparagraph (b)1v requires that the waiver will not create an unnecessary environmental or other hardship. For example, it may not be feasible for the applicant to remediate a site experiencing ongoing environmental impacts from an adjacent property to a standard acceptable for residential development.

Subparagraph (b)1vi requires that the waiver will not result in a detriment to the intent of this regulation and COAH's regulations.

Paragraph (b)2 provides for the processing of the waiver request. When the request is made by the applicant, the NJMC shall forward a copy of the request to the affected municipality. When the request is made by the affected municipality, the NJMC shall forward a copy of the request to the applicant.

Subparagraph (b)2i provides 30 days for the municipality or applicant receiving a copy of the request to review and provide any comments on the request. This subparagraph authorizes an extension of the time period upon written consent of the party requesting the waiver.

Paragraph (b)3 provides that the NJMC shall submit a recommendation to the Board of Commissioners after the expiration of the comment period. The recommendation shall state whether or not the waiver request should be approved.

Subparagraph (b)3i sets forth that the determination by the Board of Commissioners shall be made by resolution.

Subparagraph (b)3ii states that the determination by the Board of Commissioners shall be binding and conclusive upon all affected persons.

Paragraph (b)4 authorizes the Board of Commissioners, in granting waivers, to impose conditions, safeguards, and restrictions that it deems necessary to carry out the purposes, intent, and objectives stated in this subchapter.

Paragraph (b)5 provides that the Board of Commissioners also may decide that a variance procedure would be a more appropriate method to consider the proposed deviation from the regulations.

Subsection (c) clarifies that the granting of a waiver does not eliminate the responsibility of the applicant to provide for the growth share obligation generated by the development. The applicant will still be required to provide for the growth share obligation in accordance with the alternative methods of compliance in N.J.A.C. 19:4-12.14.

N.J.A.C. 19:4-12.14 Alternative methods of compliance: This section sets forth the methods by which an applicant shall address the development's growth share obligation.

Subsection (a) states that these methods shall be utilized under the following circumstances:

- The application for development is located within a zone or redevelopment areas that is exempt from providing for the affordable obligation on-site, pursuant to subsection (b) of N.J.A.C. 19:4-12.4, Exemptions;
- The NJMC has determined that the site is not suitable to include affordable housing, in accordance with N.J.A.C. 19:4-12.6, Non-residential site suitability; or
- The NJMC has granted the project, at the request of the applicant or affected municipality, an inclusionary housing waiver from providing the affordable obligation on-site in accordance with N.J.A.C. 19:4-12.13, Inclusionary housing waivers.

This subsection also states the methods by which an applicant shall address the obligation. The applicant may utilize one method exclusively or a combination of the methods to fully address the obligation.

Paragraph (a)1 provides for the applicant to construct the affordable units elsewhere within the subject municipality. The units may be constructed on one or more locations within the municipality, including locations outside the Meadowlands District.

Subparagraph (a)1i requires that a project located within a municipality that has petitioned COAH for substantive certification or received a judgment of compliance from the Superior Court shall be built in accordance with an agreement entered between the developer and the municipality.

Subparagraph (a)1ii requires that a project located within a municipality that has not petitioned COAH for substantive certification or received a judgment of compliance from the Superior Court shall be built in accordance with an agreement entered between the developer and the NJMC.

Paragraph (a)2 provides for the applicant to make a payment in lieu of construction to the NJMC on behalf of the subject municipality. The payment shall be made in accordance with N.J.A.C. 19:4-11.7.

Paragraph (a)3 provides for the applicant to dedicate land to the subject municipality for development of the affordable housing obligation.

Subparagraph (a)3i sets forth the details that the applicant shall provide regarding the proposed dedication. The applicant must show control over or the ability to control the subject property. The subject property must contain sufficient size and have no other physical limitations that would preclude development of the required number of affordable units. For cases involving the reconstruction of existing units, a structural engineering report is required. An additional provision requires the applicant to provide details showing that the impacts of former and existing land uses, both on the site and in the vicinity of the site, would not present residents with an unavoidable exposure to environmental hazards. This requirement is intended to protect the health and safety of residents and visitors. Sites located within the jurisdiction of the NJMC must be developable in accordance with the NJMC's District Zoning Regulations. For a site located in the portion of a constituent municipality that is located outside the jurisdiction of the District, the applicant must provide details to show that the units could be developed in accordance with the municipality's ordinances. Development on the site must not violate the integrity of a historic or architecturally important site or district listed on the State or National Register of Historic Places. The applicant must further demonstrate that the site meets COAH's requirements governing site suitability, which appear in N.J.A.C. 5:94-1.4 and 4.5. The site must otherwise be appropriate for residential development in accordance with sound planning principles.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments, new rules and repeals would have a positive social impact through the provision of additional affordable housing that would accompany growth in market-rate housing and non-residential development. The existing negative impacts of high housing costs and lack of housing in the greater region, which cause hardship to the population residing in low- or moderate-income households, would be lessened. The proposed amendments, new rules and repeal would also assist municipalities within the Meadowlands District in meeting their affordable housing obligations. This would potentially encourage their participation in the COAH process, which may further result in the production of new affordable units, as well as the rehabilitation of substandard housing occupied by households of low- or moderate-income.

Economic Impact

The proposed amendments, new rules and repeal primarily impact the following entities in the Meadowlands District: households of low- or moderate-income, employers, the development community, the 14 constituent municipalities of the Meadowlands District, and the NJMC itself.

Based on current development opportunities provided by the NJMC's zoning regulations and redevelopment plans, the provision of additional affordable housing would occur in locations near employment centers within or outside the District. Workers residing in households of low- or moderate-income would experience a positive economic benefit from the neighboring employment opportunities. No longer burdened by high housing costs, households residing in affordable housing would potentially have more disposable income available to purchase goods and services. Employers would benefit from the supply of labor, as well as the greater volume of consumer spending.

The development community may be economically impacted by the proposed amendments, new rules and repeal, due to the costs of addressing the affordable housing obligation associated with new development. Many developments that would otherwise consist of market rate housing or non-residential uses will be required to incorporate affordable units. This impact may be mitigated, however, by the following provisions in the amendments and new rules:

- The parking requirement for multiple family dwellings is reduced by one space for each unit that is restricted as affordable;
- Density bonuses shall be provided for development in which at least 20 percent of the residential units are affordable; and
- Density bonuses shall also be provided for affordable units reserved for renter households.

Applicants proposing other development will need to address the growth share obligation generated by the project by constructing the affordable units elsewhere within the municipality, making a payment in lieu of construction, or dedicating land for the development of affordable housing.

The District's constituent municipalities are not expected to incur additional costs to meet the requirements of the proposed amendments. The municipalities already incur costs associated with the application of COAH's requirements, as governed by its rules at N.J.A.C. 5:94 and 5:95 and the HMFA's rules at N.J.A.C. 5:80-26, relied upon by COAH pursuant to N.J.A.C. 5:94-7. Because employers would realize the benefits from the additional supplies of laborers and consumers, the constituent municipalities would be better able to retain and attract rates that are vital to a healthy tax base and a flourishing local economy.

The NJMC would need to dedicate additional staff time to discuss the requirements with and offer guidance to applicants and potential applicants; review zoning applications for compliance; ensure that the required affordable units are provided, either as part of the development or through one of the alternative methods of compliance; determine the suitability of certain sites for the provision of affordable units; administer the affordable housing trust fund; review and prepare reports regarding housing elements and fair share plans submitted by municipalities to COAH; and ensure continuing Uniform Housing Affordability Controls with respect to units in municipalities that do not have substantive certification from COAH or a judgment of compliance from the Superior Court.

Federal Standards Statement

The Hackensack Meadowlands District is located within the Federally designated Coastal Zone Management Area for New Jersey (designated in accordance with 15 CFR 923.53(a)(1)). The NJMC acts as the lead coastal planning and management agency for the Meadowlands District under the guidance of the New Jersey Department of Environmental Protection (NJDEP).

The Commission's rules serve as a regulatory tool for meeting the goals and rules established by the New Jersey Coastal Management Program. The proposed amendments and new rules do not contain any requirements or standards in excess of those imposed under Federal law.

Jobs Impact

It is anticipated that as development and construction occur naturally within the constituent municipalities of the Meadowlands District, new jobs would be added that would be attributable to the construction and rehabilitation of affordable housing. New employers in the District's municipalities, attracted by the additional labor supply that the new householders may offer, would additionally be expected to create new

jobs. No loss of jobs is anticipated as a result of these proposed amendments, new rules and repeal.

Agriculture Industry Impact

The proposed amendments, new rules and repeal will not have an impact on agriculture in the State of New Jersey.

Regulatory Flexibility Analysis

The rules of the NJMC impose reporting, recordkeeping or other compliance requirements on small businesses. Under terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are those that employ less than 100 full-time employees. Small businesses in the District include such groups as property owners, tenants, applicants and developers.

The NJMC does not administer its rules differently based on the size of a business because the mandates of the agency outlined in its enabling statute, N.J.S.A. 13:17-1 et seq., require that they be uniformly imposed upon all property owners in the District. N.J.S.A. 13:17-1 et seq. provides no differentiation in compliance requirements specifically based on business size.

Accordingly, the proposed amendments and new rules, as described in the Summary above, provide no differentiation in compliance requirements based on business size. In order to provide for uniform and consistent applicability of these rules within the District, no differential treatment is afforded to small businesses. All businesses should be able to comply with the rules utilizing the established procedures. It is not anticipated that small businesses would need to hire additional professional services to comply. Other potential costs of compliance are discussed in the Economic Impact above.

Smart Growth Impact

Although the provisions of the New Jersey State Development and Redevelopment Plan do not apply to the NJMC (pursuant to N.J.S.A. 52:18A-206), the NJMC Master Plan sets forth smart growth principles to guide growth within the Meadowlands District consistent with State policy. The NJMC rules serve as the implementation tool of this policy, resulting in a multi-faceted approach to promote smart growth within the Meadowlands District. For instance, several zones currently allow a mix of land uses in compact development, rather than requiring conventional single-use, low-density development. The proposed amendments, new rules and repeal would further enhance development in accordance with smart growth principles by promoting mixed-use development and a wider range of housing choices to better meet the housing needs of low- and moderate-income households.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 6. AFFORDABLE HOUSING

19:3-6.1 Intent and purpose

It is the intent and purpose of this subchapter to facilitate the ability of the municipalities of the Hackensack Meadowlands District to meet their affordable housing obligations in accordance with the requirements of the New Jersey Council on Affordable Housing (COAH), as governed by COAH's rules at N.J.A.C. 5:94 and 5:95 and the New Jersey Housing and Mortgage Finance Agency (HMFA)'s rules at N.J.A.C. 5:80-26.

19:3-6.2 Words and phrases defined

The words used in this subchapter shall be as defined by the NJMC in N.J.A.C. 19:4-2 or by COAH in N.J.A.C. 5:94-1.4, as amended or updated.

19:3-6.3 Municipal Housing Elements and Fair Share Plans

(a) A municipality shall submit a copy of its adopted Housing Element and Fair Share Plan, including any amendments, to the NJMC at the same time it petitions or re-petitions COAH for substantive certification or an amendment to such certification.

(b) 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.

(c) 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.

19:3-6.4 Affordable housing trust fund

(a) All payments in lieu of constructing affordable housing units on site and funds from units with extinguished controls, collected by the NJMC in accordance with N.J.A.C. 19:4-11.7 and 12, shall be deposited in separate interest-bearing escrow accounts per constituent municipality.

(b) The escrow accounts shall be established and maintained by the NJMC on behalf of each constituent municipality.

(c) In creating such escrow accounts, the NJMC shall establish a three-party escrow agreement between each constituent municipality, the financial institution, and the NJMC, addressing the collection and disbursement of funds by the NJMC.

(d) The NJMC shall release such funds to a municipality, including accrued interest, when:

1. The municipality petitions COAH for substantive certification or the municipality receives a judgment of compliance from the Superior Court; and

2. The municipality has entered an escrow agreement with COAH and the financial institution governing an affordable housing trust fund into which such disbursements shall be made pursuant to N.J.A.C. 5:94-6.

(e) If the requirements of (d) above are satisfied at the time the NJMC receives such funds, the NJMC shall deposit these funds into the escrow account and promptly remit same to the municipality.

1. The municipality shall be required to deposit any such funds it receives from the NJMC into its own affordable housing trust fund and administer and expend such funds in accordance with the provisions of this chapter and COAH's requirements in N.J.A.C. 5:94-6.

(f) The NJMC shall redirect the manner in which funds held on behalf of the municipality shall be expended under the following circumstances:

1. A municipality does not petition COAH for substantive certification within two years of the effective date of this subchapter; or

2. The Superior Court revokes a judgment of compliance and no court required COAH oversight has been established.

(g) The NJMC shall designate entities that may receive funds when the NJMC takes action pursuant to (f) above.

1. To select entities, the NJMC shall solicit proposals and statements of qualifications from private and public sector and non-profit agencies.

2. Funds shall be used to create affordable housing pursuant to N.J.A.C. 5:94 within the District's constituent municipalities and in accordance with the following:

i. The NJMC shall assign funds to projects planned within the municipality that generated the revenues to the extent practicable.

ii. Projects involving new construction shall be built in accordance with an agreement between the developer and the NJMC.

19:3-6.5 Municipal request for rezoning

Municipalities may seek to rezone land to meet their affordable housing obligations in accordance with COAH requirements and the regulations set forth in N.J.A.C. 19:3.

19:4-3.8 [Affordable housing] (Reserved)

[The NJMC encourages the development of residential uses in accordance with New Jersey State Council on Affordable Housing (COAH) guidelines. The municipality may satisfy its Affordable Housing responsibility with any residential development in the District. The NJMC may accept petitions for rezonings from municipalities seeking to rezone land in the District to meet their Affordable Housing obligations and processed in accordance with N.J.A.C. 19:3. Applications for variances to allow density increases to meet Affordable Housing obligations shall also be considered and processed in accordance with N.J.A.C. 19:4-4.14.]

SUBCHAPTER 5. DISTRICTS, USES AND STANDARDS

19:4-5.2 General Provisions

(a) The following provisions shall apply to all zones:

1.-7. (No change.)

8. Where development includes housing to meet municipal growth share obligations in N.J.A.C. 19:4-12, the bulk, layout, and design requirements in N.J.A.C. 19:4-12.8 through 12.11 shall apply.

SUBCHAPTER 8. SITE PLAN REQUIREMENTS

19:4-8.4 Parking and loading requirements

(a) The following shall be the minimum parking and loading requirements per use:

TABLE 8-1

Parking and Loading Requirements

Use	Minimum Parking Requirements	Minimum Loading Requirements
1.-25. (No change.)		
26. Dwelling, multiple family	[Two] One space per unit for units restricted as affordable in accordance with N.J.A.C. 5:80-26; two spaces per unit for all other units; and one visitor space per four units	Not required, except when greater than four stories: one loading space; 12 feet x 30 feet
27.-76. (No change.)		

(b) (No change.)

SUBCHAPTER 11. FEE SCHEDULE

19:4-11.1 General provisions

(a) This fee schedule shall not be applicable to county or municipal government. Any fee, or portion thereof, provided for herein, may be

waived by the Executive Director upon recommendation of the Chief Engineer upon good cause shown, including financial hardship, size and scope of the application and/or business entity, and general economic conditions in the regions. The NJMC shall automatically waive the fee for applications for residential development, or the residential portion of a mixed-use development, in which 100 percent of all housing units proposed in the application would be reserved as affordable units.

(b)-(f) (No change.)

19:4-11.7 Affordable housing

(a) When a payment in lieu of constructing affordable housing units is made to satisfy the provisions of N.J.A.C. 19:4-12, the amount of the payment shall be determined and collected as follows:

1. The payment shall be calculated in accordance with the per-unit rates provided in Table 11-1. When the calculated obligation results in a fraction of a unit, that figure shall be rounded to the nearest hundredth decimal place and multiplied by the per-unit payment rate.

Table 11-1
Payments in Lieu of Construction

<u>Municipality</u>	<u>Per Unit Amount</u>
Carlstadt	\$147,072
East Rutherford	\$141,433
Jersey City	\$140,690
Kearny	\$142,887
Little Ferry	\$142,186
Lyndhurst	\$144,924
Moonachie	\$146,008
North Arlington	\$144,268
North Bergen	\$142,867
Ridgefield	\$153,596
Rutherford	\$145,328
Secaucus	\$144,128
South Hackensack	\$143,178
Teterboro	\$143,255

2. The submission of such payment shall be a condition of any zoning certificate.

3. The NJMC shall not issue a certificate of completion or occupancy certification for the development that generated the affordable housing obligation until such payment is received in full.

SUBCHAPTER 12. AFFORDABLE HOUSING

19:4-12.1 Purpose

This subchapter sets forth methods by which the NJMC shall assist constituent municipalities of the Hackensack Meadowlands District with meeting their fair share housing obligations in accordance with the New Jersey Council on Affordable Housing (COAH)'s rules at N.J.A.C. 5:94 and ensuring continuing uniform housing affordability controls pursuant to the HMFA's rules at N.J.A.C. 5:80-26.

19:4-12.2 Words and phrases defined

The words used in this subchapter shall be as defined by the NJMC in N.J.A.C. 19:4-2 or by COAH in N.J.A.C. 5:94, as amended or updated.

19:4-12.3 Applicability

(a) This subchapter shall apply to any zoning certificate application sought in accordance with N.J.A.C. 19:4-4.2 except where otherwise exempted pursuant to N.J.A.C. 19:4-12.4.

1. Compliance with the terms of this subchapter shall be a condition of any zoning certificate.

2. The NJMC shall not issue a certificate of completion and/or occupancy certification unless the project is in compliance with all the requirements of this subchapter and N.J.A.C. 19:4-11.7.

19:4-12.4 Exemptions

(a) Zoning certificate applications for the following are exempt from the requirements of this subchapter:

1. Development limited to one or two market-rate dwelling units;
2. Development by municipal government; or
3. Development that would not generate a municipal affordable housing obligation pursuant to the application of standards published by COAH as N.J.A.C. 5:94 Appendix E.

(b) If a property is located within any of the following zones or Redevelopment Areas, any zoning certificate applications not otherwise

exempt under (a) above shall be exempt from satisfying within the development the affordable housing growth share requirements in N.J.A.C. 19:4-12.5; however, such development shall provide for the municipal growth share obligation in accordance with one or more of the alternative methods of compliance in N.J.A.C. 19:4-12.14:

1. Environmental Conservation;
2. Parks and Recreation;
3. Aviation Facilities;
4. Light Industrial B;
5. Intermodal A;
6. Intermodal B;
7. Heavy Industrial;
8. Public Utilities; and
9. Redevelopment Areas that do not permit residential uses.

19:4-12.5 Growth share obligation

(a) The applicant shall satisfy the growth share obligation generated by the development in accordance with the provisions of this subchapter, except where exempt in N.J.A.C. 19:4-12.4.

(b) The growth share obligation for residential and non-residential development shall be provided in accordance with the following, pursuant to N.J.A.C. 5:94, as amended and supplemented:

1. One affordable housing unit shall be provided within the development for every eight market-rate housing units; and

2. One affordable housing unit shall be provided for every 25 new jobs created, pursuant to the standards published by COAH as N.J.A.C. 5:94 Appendix E.

i. The growth share obligation resulting from non-residential development shall be provided within the development, unless the NJMC staff deems the site as unsuitable in accordance with N.J.A.C. 19:4-12.6 or the Board of Commissioners grants the applicant or affected municipality an inclusionary housing waiver in accordance with N.J.A.C. 19:4-12.13.

(c) The growth share obligation for mixed residential and non-residential development shall be provided within the development and shall be calculated as the sum of the obligations for each use.

(d) When the calculated growth share obligation results in a fraction of a unit, that figure shall be rounded to the nearest hundredth decimal place. A fractional obligation of less than one unit or a fractional obligation that falls between two whole numbers may be satisfied by providing one affordable unit or by making a pro-rated payment in lieu of construction in accordance with N.J.A.C. 19:4-11.7.

19:4-12.6 Non-residential site suitability

(a) A non-residential development site shall be deemed unsuitable for the provision of affordable housing units generated by the growth share obligation upon a determination by NJMC staff that any of the following conditions exist:

1. The size, shape, or layout of any existing structures that shall remain, or other physical limitation(s), precludes development of the required housing units;
2. Residential development would not be compatible with the proposed use of the site;
3. The impacts of former and existing land uses, either on the site or in the vicinity of the site, may present residents with an unavoidable exposure to environmental hazards;
4. The site does not meet COAH's site suitability requirements at N.J.A.C. 5:94-1.4 and 4.5; or
5. The site is otherwise unsuitable for residential use in accordance with sound planning principles, including, but not limited to, the goals, policies, and strategies of the NJMC Master Plan.

(b) If the NJMC determines that the site is not suitable for residential use, the applicant shall address the proposed development's growth share obligation through one or more of the methods in N.J.A.C. 19:4-12.14.

(b) If a property is located within any of the following zones or Redevelopment Areas, any zoning certificate applications not otherwise

19:4-12.7 Permitted locations for affordable housing

(a) Development within the following zones or redevelopment areas shall include, as a permitted use, affordable housing needed to

satisfy the growth share obligation in N.J.A.C. 19:4-12.5, unless otherwise exempted in N.J.A.C. 19:4-12.4:

1. Waterfront Recreation;
2. Low Density Residential;
3. Planned Residential;
4. Neighborhood Commercial;
5. Commercial Park;
6. Regional Commercial;
7. Highway Commercial;
8. Light Industrial A;
9. Transportation Center; and
10. Redevelopment Areas that permit residential uses.

19:4-12.8 Bulk regulations

(a) The entire development, including any residential and non-residential uses, shall be subject to the bulk requirements of the zone, except as provided in this section.

(b) For mixed use development in the following zones, the floor area of residential development shall not exceed 50 percent of the floor area of the development:

1. Regional Commercial;
2. Highway Commercial;
3. Light Industrial A;
4. Light Industrial B; and
5. Transportation Center.

19:4-12.9 Residential density

For zones with no residential density requirements, the maximum permitted density shall be 25 dwelling units per acre, prior to the calculation of any bonuses at N.J.A.C. 19:4-12.10, and subject to any FAR limitation for the zone.

19:4-12.10 Density bonuses

(a) For development in which at least 20 percent of the residential units would be affordable, density bonuses shall be provided as follows, and shall be exclusive of any bonus granted under (b) below:

1. The permitted floor area ratio in the zone may be increased by up to 0.25; or
2. The permitted residential density for the zone may be increased by up to three additional dwelling units per acre.

(b) A density bonus of three dwelling units per acre shall be permitted for every 25 affordable units reserved for renter households, said bonus to be exclusive of any bonus granted under (a) above.

19:4-12.11 Layout and design

(a) The layout and design of inclusionary developments 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.

(b) 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>
One bedroom	700 square feet
Two bedrooms	850 square feet
Three bedrooms	1,150 square feet
Four bedrooms	1,250 square feet

(c) At least one bedroom shall contain a minimum floor area of 140 square feet and each additional bedroom shall contain a minimum floor area of 90 square feet.

19:4-12.12 Administration of affordable units

(a) The administration of affordable housing units provided in accordance with this subchapter shall conform to the requirements of COAH's substantive rules, N.J.A.C. 5:94, and HMFA's Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, as amended and supplemented. These provisions include, but are not limited to,

requirements regarding phasing of units, controls on affordability, 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.

(b) The municipality shall be responsible for such administration, and may designate a COAH-approved entity to administer the affordable units for the duration of the required administration period.

1. 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;

2. The municipality shall enter into a contract with the designated entity; and

3. The entity shall assume the responsibilities of the administrative agent set forth by HMFA in N.J.A.C. 5:80-26.

(c) Where development is located within a municipality that has not petitioned for substantive certification or has not received a judgment of compliance, the following additional administrative provisions shall apply:

1. Any contract required in (b) above shall be submitted to the NJMC for review and approval to ensure compliance with the requirements of this section.

2. Funds from the sale of affordable units with extinguished affordability controls shall be deposited into the NJMC's affordable housing trust fund and disbursed in accordance with the provisions of N.J.A.C. 19:3-6.4.

19:4-12.13 Inclusionary housing waivers

(a) If a development is not otherwise exempt in N.J.A.C. 19:4-12.4 or 12.6(a), an applicant or the affected municipality may seek an inclusionary housing waiver from the requirement that development satisfy the growth share obligation within the development in accordance with N.J.A.C. 19:4-12.5.

(b) The inclusionary housing waiver procedure shall be as follows:

1. A request for an inclusionary housing waiver shall be made in writing to the NJMC and shall address the following:

i. The specific NJMC citation from which the waiver is requested. The NJMC shall not consider waivers to COAH's rules;

ii. Such a waiver shall not result in a threat to the public health, safety, and/or order;

iii. Where an applicant seeks a waiver, the applicant shall state which method(s) of compliance it shall provide pursuant to the alternative methods listed in N.J.A.C. 19:4-12.14;

iv. Where a municipality seeks a waiver, the municipality shall satisfactorily demonstrate that such waiver will not impair its ability to meet its total fair share housing obligation;

v. The strict application of the regulation would create an unnecessary environmental or other hardship; and

vi. Such waiver will not result in a substantial detriment to the intent of this subchapter and COAH's rules in N.J.A.C. 5:94.

2. If an applicant requests an inclusionary housing waiver, the NJMC shall forward a copy of the request to the municipality in which the project is located. If the municipality requests the waiver, the NJMC shall forward a copy of the request to the applicant.

i. The municipality or applicant receiving a copy of the request shall have 30 days within which to review and provide comment(s) on the request. Such time period may be extended upon written consent of the party requesting the waiver.

3. After the expiration of the comment period under (b)2i above the NJMC staff shall submit a recommendation to the Board of Commissioners stating whether or not the waiver request should be approved.

1. The Board of Commissioners shall make a determination by resolution.

ii. The determination of the Board of Commissioners shall be binding and conclusive upon all affected persons.

4. In granting waivers, the Board of Commissioners may impose such conditions, safeguards, and restrictions as, in its judgment, will be necessary to carry out the purposes, intent, and objectives of the provisions of this subchapter.

5. The Board of Commissioners shall have the authority to decide that a variance procedure would be a more appropriate method in which to consider the proposed deviation from the requirements of N.J.A.C. 19:4-12.5.

(c) If the waiver request is granted, the applicant shall provide for the municipal growth share obligation generated by the development in accordance with the alternative methods of compliance listed in N.J.A.C. 19:4-12.14.

19:4-12.14 Alternative methods of compliance

(a) Where an application is exempt from satisfying within the development the growth share requirements at N.J.A.C. 19:4-12.4 (b), or the NJMC determines at N.J.A.C. 19:4-12.6 that a site is not suitable to include affordable housing, or the NJMC grants an inclusionary housing waiver in accordance with N.J.A.C. 19:4-12.13, the applicant shall address the development's growth share obligation through one or more of the following methods:

1. New construction of affordable units elsewhere within the subject municipality;

i. If the municipality has petitioned COAH for substantive certification or received a judgment of compliance from the Superior Court, the project shall be built in accordance with an agreement entered between the developer and the municipality.

ii. If the municipality has not petitioned COAH for substantive certification or received a judgment of compliance from the Superior Court, the project shall be built in accordance with an agreement entered between the developer and the NJMC.

2. A payment in lieu of construction in accordance with N.J.A.C. 19:4-11.7; and/or

3. The dedication of land to the subject municipality for affordable housing development.

i. For such dedication, the applicant shall provide details sufficient to show the following:

(1) The applicant has control over or has the ability to control the subject property;

(2) The subject property contains sufficient size and has no other physical limitations that would preclude development of the affordable units;

(3) A structural engineering report for existing structures in cases involving reconstruction;

(4) The impacts of former and existing land uses, both on the site and in the vicinity of the site, would not present residents with an unavoidable exposure to environmental hazards;

(5) If the site is located within the jurisdiction of the NJMC, the units could be developed in accordance with this chapter;

(6) If the site is located outside the jurisdiction of the NJMC, the units could be developed in accordance with municipal ordinances;

(7) The integrity of a historic or architecturally important site or district listed on the State or National Register of Historic Places would be maintained;

(8) The site meets COAH site suitability requirements at N.J.A.C. 5:94-1.4 and 4.5; and

(9) The site is otherwise appropriate for residential development in accordance with sound planning principles.