



## State of New Jersey

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February 11, 2008

The Honorable Salvatore Perillo  
Mayor, City of Ocean  
861 Asbury Avenue  
Ocean City, NJ 08226

### Re: Ocean City Petition for Initial Plan Endorsement -- Consistency Letter

Dear Mayor Perillo:

The Office of Smart Growth (OSG) and our state agency partners have reviewed the Initial Plan Endorsement petition submitted by Ocean City for consistency with the State Development and Redevelopment Plan (State Plan) and would like to commend the City for its active participation and dedication to the Plan Endorsement process. However, significant consistency issues remain that need to be resolved prior to OSG's recommendation for endorsement. Pursuant to N.J.A.C. 5:85-7.5(f), OSG requests additional information as outlined below in order to recommend the Ocean City petition for Initial Plan Endorsement by the State Planning Commission (SPC). OSG and our state agency partners are committed to working with the City to establish a timeline to address the consistency issues to receive Plan Endorsement from the SPC.

#### State Agency Consistency Review

The SPC reviews petitions for plan endorsement and endorses them on the basis of their consistency with the goals, policies and strategies of the State Plan and in accordance with the Plan Endorsement Guidelines. Upon review of the petition, OSG and the state agencies have identified areas of concern that need to be addressed before OSG can make a recommendation to the SPC to find the petition consistent with the State Plan. In cooperation with the state agencies, resolution of the issues identified in this report will also address issues that NJDEP has identified in order for DEP to designate a CAFRA center in Ocean City under the Coastal Areas Facility Review Act (CAFRA).

In order for DEP to designate a center endorsed by the SPC as a CAFRA Center, DEP must be able to make a finding that the center is consistent with the purposes of CAFRA and the Coastal Zone Management Rules. DEP must determine whether accepting a center would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment. The DEP will provide technical assistance to complete the CAFRA requirements discussed below.

The Coastal Zone Management Rules require DEP to make this consistency determination within 90 days of SPC's endorsement. Therefore, municipalities seeking CAFRA center designation from DEP should plan to meet the additional CAFRA requirements prior to, or within 45 days of State Planning Commission endorsement. Fulfillment of these tasks will be necessary for DEP to accept boundary



changes approved in Plan Endorsement for use in the CAFRA permit review under the Coastal Zone Management rules.

Attached are two documents, "Requirements for Municipal Plan Endorsement Consistency" and "Requirements for CAFRA Consistency" that provide further guidance as to what is needed in order to achieve plan endorsement by the SPC and to achieve CAFRA center designation from DEP subsequently thereafter. You can also find the attached documents and other Plan Endorsement-related guidance online at the OSG website, <http://www.nj.gov/dca/osc/plan/endorsement.shtml>.

### **Consistency Issues**

#### Master Plan

Ocean City adopted the current Master Plan in 1988 and will need to adopt new master plan elements that reflect changes on the island since then, as the submitted documents do not accurately portray the City's current objectives. New Master Plan elements shall be required in order for OSG to recommend Plan Endorsement to the SPC. The Office of Smart Growth requests that the City collaborate with OSG and the state agencies to ensure that the following master plan elements are consistent with the State Plan:

#### Land Use Plan Element

Amend the 2001 Land Use Plan and existing development regulations, to ensure these documents are consistent with one another. The Land Use Plan Element shall reflect the boundaries of State Plan centers and planning areas. The Land Use Plan Element shall be completed with consideration of information from the Natural Resource Inventory (NRI) so that land uses are compatible with natural resources and the CAFRA Coastal Consistency Bar. The Land Use Plan Element shall incorporate information and/or concepts from relevant state or regional efforts (i.e. Gibson Study) as much as is possible depending on the progress of those efforts and their connections to land use. CAFRA requirements will also be identified as early Plan Implementation Agreement (PIA) items. Accordingly, the Land Use Plan Element must include narratives to support ordinances requested through the Action Plan, PIA and CAFRA Coastal Consistency PIA items.

#### Open Space and Recreation

Produce Open Space and Recreation Element for Master Plan to ensure provision of accessible regional and neighborhood level open space and recreation facilities as well as shore access. This element is particularly important to Ocean City, considering that people go there primarily for recreational purposes. The plan must identify and examine open space and recreation resources important to the municipality, and map out an implementation strategy to protect, manage and improve them. A severe shortage of active recreation facilities and indoor gym space has been identified (Page 28 of petition). The City shall also update the Zoning Map and develop an Open Space and Recreation Map to be included in the new element or to be added to the current Land Use Plan. This map shall indicate current open spaces and recreation opportunities as well as areas intended for use in the future as open space.

#### Proposed Center Boundary and Planning Area Changes

Ocean City's petition includes a request to designate the city as a Regional Center. Ocean City meets the Regional Center Criteria described in the State Plan. The CAFRA Non-Mainland Coastal Center boundary shall be consistent with proposed State Plan center boundary and the sewer service area.

#### Fair Share Plan

Ocean City's 1987-1999 obligation remains at 411 units and the rehabilitation share has been recalculated to 138. The city shall provide a "Fair Share Plan" indicating how they intend to address the third round total of the 1987-1999 new construction obligation plus the 1999-2018 new construction obligation as well as the rehab share as identified in the Housing Element.

#### Coastal Consistency Statement

This statement shall address natural resource protection and coastal management in Ocean City through demonstration of consistency of local plans and ordinances with the goals of the Coastal Zone Management Program found in the Coastal Zone Management rules at N.J.A.C. 7:7E et seq. Municipal plans shall also be consistent with any existing DEP rule, permit or plan including Municipal Stormwater Regulations and Federal River Management Plans.

#### Water Supply Study/ Plan

Ocean City's sewer service is provided to by the New Jersey American Water Company. Water is supplied from the Atlantic City 800-foot sands aquifer by ten public wells and one private well, as well as one public well in Upper Township. The City's petition does not indicate the level of service they currently provide to the City and if current and future populations will be adequately served. Municipalities must provide documentation that water supply capacity exists for the amount of growth detailed in the Master Plan. This documentation must identify existing and proposed water supply sources. For existing public water sources, identify the available approved allocations and firm capacity. Ocean City shall evaluate their water supply and compare this information to projected water use based on population estimates and projections. This "capacity analysis" will be based on utility service capacity (allocation) and current usage will be reflected in the updated utilities element, described in the PIA. The plan shall coordinate with the Gibson Bill State Water Supply Study, as well as any county conservation studies.

#### Zoning Ordinance:

- The City shall make zoning ordinance revisions and/or adopt new ordinances to implement the policies and recommendations of the updated Land Use Element, and accurately reflect center boundaries and/or planning area changes. In addition, the City shall adopt ordinances that support appropriate environs protection measures for Critical Environmental Sites (CES), including zoning, resource protection, and site plan and subdivision ordinance revisions that are consistent with coastal goals and wastewater management plans. The Zoning Ordinance shall be consistent with the environmental programs described in the newly amended Land Use Element, including but not limited to, those implementing the Habitat Conservation Program, Wellhead Protection Program, and the NRI. Specifically the following zoning issues need to be addressed:
- There are wetlands within the City that are zoned residential, specifically the areas between Simpson and Bay/Haven Streets and 25th-29th Streets. These streets are currently preserved as a park and bird sanctuary, but zoning map does not reflect this.
- There are single lots in Merion Park, (which was filled and built in the 1960s,) that are undeveloped and may still be wetlands. With land at a premium, efforts to fill and build on these lots continue. State determination of wetland status is required. (Page 8)
- The 2001 Land Use Element of the Master Plan and its associated zoning map do not delineate the coastal wetlands and bay islands as any zone. Although they probably cannot be developed under any wetlands rules, the lack of a designation makes it difficult to answer questions about lots that are mapped in the typical grid pattern of subdivision (Page 8)".

### Emergency Planning

The petition shall include formal evidence that the City has an Emergency Operating Plan approved by the New Jersey State Police. An approval letter from the State Police may be submitted in lieu of the full Plan.

### **Planning and Implementation Agreement (PIA)**

The PIA outlines the ongoing planning and regulatory changes needed to implement the Endorsed Plan. As Ocean City seeks both State Plan and CAFRA Center designation, the PIA includes two sections dealing with implementation necessary to meet both Plan Endorsement and the Coastal Zone Management Rules. In addition to those items included in the draft PIA, the PIA shall be revised and/or include the following:

### **DEP CAFRA Consistency PIA Requirements**

#### Infrastructure and Utilities Element

As with transportation, planning for utility infrastructure shall guide the location and amount of growth while simultaneously considering the projected development and associated demand. The infrastructure and utilities element shall contain data and recommendations for: Solid Waste, Wastewater, Water, Communications, and Energy. The Utilities Element shall utilize methods to manage the demand for infrastructure while supporting the existing growth. Green Building Techniques can reduce infrastructure load and operational costs. Source reduction is another way to manage demand for municipal recycling services. After calculating demand incorporating various mechanisms for reuse and conservation, Ocean City shall assess capacity, including the age and quality of existing infrastructure. Where possible, Ocean City should share services with other towns or through the county to improve the efficiency of existing systems. This updated element shall reflect the findings of the Water Supply Study and the Water Conservation Plan. Utility service capacity (allocation) and current usage will be reflected in the updated utilities element.

#### Water Conservation Plan

The Water Conservation Plan shall set out a strategy to reduce water consumption levels. The focus of this strategy should be to reduce the loss and waste of water, promote recycling and reuse opportunities, and extend the life of current water supplies by reducing demand. The opportunities the City shall investigate including incentives for home improvements, vegetation requirements, and education. At present, the City does not promote xeriscape landscaping or require low-water plants in new development, although the use of native vegetation is favored in the zoning ordinances relative to the requirement to install irrigation in new development. No investigation of alternate water sources for outside watering has been done. (ERI Page 13) The City should consider changing this policy and requiring vegetation that conserves water and/or alternative watering sources. Ocean City shall adopt ordinances to implement this plan. Ordinances could include but not limited to: limiting landscape watering and other outdoor uses, fixing old and damaged infrastructure, and education. DEP will assist Ocean City with the development of a Water Conservation Ordinance.

#### Wastewater Management Plan

The Department is not seeking for the City to have a fully approved WMP in order to receive Endorsement. However, the Department requires that the WMP for the City serves as a chapter of the County Plan and is consistent with the Endorsed Plan and center boundaries. The Cape May County Wastewater Management Plan (WMP) expired in September 2007. The City shall work with Cape May County to revise the Ocean City portion of the WMP. The sewer service area will be consistent with the center boundary. The Wastewater Management Plan that shall be up-to-date, comply with Water Quality Management Planning rules, N.J.A.C. 7:15, and be consistent with the Master Plan and the Plan

Endorsement petition. Proposed wastewater service shall be pulled back from environmentally sensitive, and other areas not proposed for growth. For areas not served by sewer, zoning ordinances shall be amended to be consistent with the densities required pursuant to the Septic Management component of the WMP. Prepare an assessment of wastewater treatment capacity based upon expected development and redevelopment. Prepare an Wastewater Management Plan Amendment to address allocation expansion if required.

#### Wellhead Protection Program

The Wellhead Protection Program shall manage potential sources of contamination and threatening activities that occur within a source water protection area. The Program shall include delineation of the source water protection area, an inventory of known and potential contamination sources, a determination of water supply system susceptibility to these contaminants, public outreach and education about threats, implementation measures to prevent, reduce or eliminate threats, and contingency planning strategies to address with water supply contamination or service interruption emergencies. Source Water Protection Programs can be developed for the protection of either groundwater supplies of drinking water, wellhead protection areas or surface water supplies, intakes and reservoirs and their drainage.

#### Habitat Conservation Program

Ocean City's beach has been mapped as critical habitat for threatened and endangered species. The State requires additional documentation demonstrating the City's efforts to protect these critical habitats. To protect areas of high quality habitat, the City shall develop a Habitat Conservation Program, as part of the Master Plan, specifying conservation requirements and implementation measures to protect habitat of Federal and State listed threatened and endangered species. Conservation Program requirements may include a mix of options that include the creation, enhancement, restoration, acquisition or preservation of habitat and/or monetary contributions for these purposes. The City shall adopt environmental assessment requirements for new development applications, to implement the habitat conservation plan. DEP will provide an example and assistance to Ocean City in order to develop a Habitat Conservation Plan and/or Environmental Assessment Requirements to further protect the endangered and threatened species that frequent the island.

#### **State Plan PIA Requirements**

Generally, the PIA shall be formatted by subject with corresponding numbering. OSG shall provide a template for this format. Through negotiations, the timeframes in the PIA shall be revised to be more specific (i.e. specific timeframes for completion of tasks, rather than the range that is currently provided in the Draft PIA).

#### General

- The City shall submit drafts of new or significantly revised planning documents required by this PIA for review by the OSG and partner agencies.
- Upon fulfillment of the CAFRA Coastal Consistency requirements, DEP shall publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the boundaries of any centers, cores, nodes or planning areas that are part of Plan Endorsement.
- The City shall submit a biennial report concerning the terms of this PIA and related efforts pursuant to NJAC 5:85-7.12(c). Due to the significant number of PIA items likely to be addressed in the first year, the City shall submit the first report one year after Endorsement, and then every two years thereafter.
- For PIA entries that require NJDOT assistance, the state assistance column shall have an asterisk denoting the following: "When requested, NJDOT shall give priority consideration to providing technical assistance consistent with program requirements and subject to the availability of state

resources.”

- The City shall coordinate with planning efforts of adjoining municipalities, the County and State and regional planning efforts particularly concerning: regional planning, transportation, economic development, tourism, natural resource protection and open space and recreation.

### Zoning

In addition to the zoning necessary for the CAFRA PIA, the following zoning issues shall be resolved:

- Hotel-Motel and Boardwalk Zones: With the exception of the Redevelopment Area Plan, very little conforming activity has been proposed or occurred in this zone since the last Master Plan Reexamination. Ocean City should consider different parking requirements in that zone and the potential development opportunities that would occur if the parking requirements were altered. The appropriateness of the use should also be considered.
- During a discussion at the pre-petition meeting, Ocean City pointed out that Route 52 is mostly surrounded by water and that the zoning conformity provisions would not apply. This is, for the most part, correct, in view of the actual landscape through which this part of the highway goes. However, Route 52 does have a designated Access Level and Desirable Typical Section (DTS) under the Code. The highway segment in Ocean City goes from milepost 0 to 1.91. The Access Level is 3, which allows for right-turn access with provision for left-turn access via jughandle. The DTS is 4A, which allows for four lanes, divided, with shoulders or parking, and a 114-foot right-of-way. The City officials stated verbally that any existing lots along the roadway would not be buildable because of wetlands and other environmental constraints. A visitors' center now exists and recreational fishing will be permitted off the islands. Ocean City shall document these conditions, to conform the zoning conformity requirement would not apply in practice. The city needs to demonstrate compliance in their zoning code, even though, the chances of development along that stretch of highway are in fact remote.
- The City shall provide copies of its annual report of zoning activities per the MLUL requirement outlined in N.J.S.A. 40:55D-70.1.

### Historic Preservation Plan

Ocean City's ERI, 2005 indicates that the City needs a new Historic Preservation Plan. The City has designated a Historic Preservation District on the NJ Register since the adoption of the 1988 Master Plan. A new Historic Preservation Plan shall highlight this area as well as other historic features in the City and indicate what the City will do to protect those valuable resources.

### Circulation Element Amendments

The revised Circulation Element shall also include a discussion of strategies for goods movement, including regional freight and local truck deliveries to businesses. The Element shall consider the ability of the transportation system throughout the entire municipality to accommodate existing and planned land uses, as well as redevelopment initiatives.

### Stormwater Management Amendments

The City shall amend the Stormwater Management Plan and supporting ordinances to address the fall leaves issue as well as incorporate alternative stormwater treatments.

### **Changes to existing PIA items**

OSG required additional items be added to the Planning Implementation Agenda. These items have been outlined in this letter. Certain items have been deleted or moved from the PIA as well:

- Open Space and Recreation Plan, Item D1, lists the need for a new Open Space and Recreation Plan. This item has been removed from the PIA, because the Open Space and Recreation

Element shall be completed as part of the Action Plan.

- Item D2, lists the need for Open Space to preserve and acquire open space. The language in the PIA was updated to coordinate the acquisition with the Open Space and recreation Element in the Action Plan.
- Item E2 lists the need for a Conservation Element. The language was updated to ensure this effort is coordinated with information from the NRI and Habitat Conservation Plan. Implementation measures will also be necessary.
- The Circulation Plan, item F1 was updated to specify that goods movement must be addressed.
- The Coastal Consistency Statement, Item H1, was moved the Action Plan
- Regulations, Item B1 was deleted from the PIA. Item E1 contains specific details about the Environmental Assessment ordinance the City will be adopting.

### **Conclusion**

Pursuant to N.J.A.C. 5:85-7.5(f), the City shall submit an amended petition within 90 days, by May 8, 2008. Should the City be unable to provide us with the necessary items within the prescribed timeframe, the petition shall be considered withdrawn and no further action shall be taken by OSG unless Ocean City resubmits a petition for consideration.

On October 17, 2006, the State Planning Commission adopted a resolution that authorizes OSG to continue to work with petitioning entities towards Plan Endorsement by allowing for an extension of the time periods contemplated by the State Planning Rules through the execution of a Memorandum of Understanding (MOU) and an agreed-upon Action Plan that establishes timelines for completion and evaluation of the tasks identified by the Action Plan. Any extension of time authorized by an MOU would be contingent on the petitioning entity's compliance with a mutually agreed-upon Action Plan, compliance with the MOU, and the petitioning entity's good faith efforts towards achieving Plan Endorsement

Should the City choose to work under an Action Plan and MOU with the SPC, please notify OSG within 60 days of receipt of this letter, or by April 8, 2008. Given the breadth of items to be resolved, we recommend that you enter into the Action Plan and MOU. Accordingly, we would like to schedule a meeting with you and representatives of the relevant state agencies to further discuss next steps and formulate this Action Plan.

Thank you again for your commitment to the Plan Endorsement process. If you have any questions or concerns, please feel free to contact Kate Meade, Planner for Cape May County within the Office of Smart Growth, at (609)-633-8573 or via email at [kmeade@dca.state.nj.us](mailto:kmeade@dca.state.nj.us).

Sincerely,



Benjamin L. Spinelli  
Executive Director

BLS:km

Attachments

c: Keith Hartzell, City Council President  
Dr. Fred Weber, Planning Board Chairperson  
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Cindy Griffith, City Clerk  
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