

**[CORRECTED COPY]**  
**CHAPTER 89**

**AN ACT** concerning implementation of the State Development and Redevelopment Plan, establishing a Smart Growth Ombudsman in the Department of Community Affairs, establishing a Division of Smart Growth in the Department of Environmental Protection, a Division of Smart Growth in the Department of Transportation, and a Division of Smart Growth in the Department of Community Affairs, providing for the expediting of certain State permits in smart growth areas, supplementing P.L.1978, c.67 (C.52:14F-1 et seq.), and supplementing Titles 13, 27, and 52 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.52:27D-10.2 Definitions relative to Smart Growth Ombudsman.

1. As used in sections 2 and 3 of P.L.2004, c.89 (C.52:27D-10.3 and C.52:27D-10.4):

"Applicant" means any person applying for a permit pursuant to section 5, 7, 9 or 10 of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2, C.52:27D-10.6 or C.13:1D-146);

"Ombudsman" or "Smart Growth Ombudsman" means the Smart Growth Ombudsman appointed by the Governor pursuant to section 2 of P.L.2004, c.89 (C.52:27D-10.3);

"Permit" means any permit or approval issued by the Department of Environmental Protection, pursuant to any law, or any rule or regulation adopted pursuant thereto, provided that "permit" shall not include any approval of a grant, or a permit issued pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), or the "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1 et seq.), any permit or approval issued by the Department of Transportation pursuant to any law, or any rule or regulation adopted pursuant thereto, or any permit or approval required as a condition of development or redevelopment issued by the Department of Community Affairs pursuant to any law or any rule or regulation adopted pursuant thereto;

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State, or State or interstate agency; and

"Smart growth area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or a designated growth center in an endorsed plan; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection.

C.52:27D-10.3 Smart Growth Ombudsman in DCA.

2. a. There is created in the Department of Community Affairs a Smart Growth Ombudsman. The Smart Growth Ombudsman shall be appointed by the Governor, serve at the pleasure of the Governor, and report to the Governor.

b. The activities and duties of the Smart Growth Ombudsman shall be funded out of revenues collected pursuant to the fee schedule adopted pursuant to subsection d. of section 5, subsection d. of section 7 and subsection d. of section 9 of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2 and C.52:27D-10.6) and remitted to the Smart Growth Ombudsman.

c. The Smart Growth Ombudsman may call upon the assistance of the services of those employees of any State, county or municipal department, board, bureau, commission or agency as may be required and as may be necessary for its purposes. In addition, the Smart Growth Ombudsman may call upon any department, agency or office of the State of New Jersey for such documents, materials and information as it may deem necessary.

C.52:27D-10.4 Duties of Smart Growth Ombudsman.

3. The Smart Growth Ombudsman shall:

a. in conjunction with the Directors of the Divisions of Smart Growth established pursuant to sections 5, 7 and 9 of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2 and C.52:27D-10.6), review all relevant permit programs and requirements and make recommendations to the Governor and the departments regarding integration of multiple review and approval processes and recommendations on those permits for which approval may be expedited in smart growth areas through mechanisms such as permits-by-rule, general permits or qualification of professionals;

b. maintain and operate an informational website which shall enable any person to gain access to information regarding the statutory obligations and authority of the Smart Growth Ombudsman, including those services which the ombudsman may provide to State permit applicants to facilitate or expedite permit approval and issuance;

c. at the request of an applicant, participate in the permit application and review process to ensure compliance with the time frames set forth in subsection c. of section 5, subsection c. of section 7 or subsection c. of section 9, or subsections c. and d. of section 10, as the case may be, of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2, C.52:27D-10.6 or C.13:1D-146);

d. review any new rules or regulations proposed by any State agency and determine whether the proposed rules or regulations, as they pertain to the smart growth areas, are consistent with the State Development and Redevelopment Plan. In the event that the Smart Growth Ombudsman determines that the proposed rules or regulations in the smart growth areas are not consistent with the State Development and Redevelopment Plan, the Smart Growth Ombudsman shall return the proposed rules or regulations to the State agency with recommended amendments necessary to make the proposed rules or regulations consistent with the State Development and Redevelopment Plan. A State agency shall not file proposed new rules or regulations for publication in the New Jersey Register unless and until the Smart Growth Ombudsman determines the proposed rules or regulations in the smart growth areas are consistent with the State Development and Redevelopment Plan. The requirements of this section may be waived upon a written determination by the Chief Counsel to the Governor that the proposed rules or regulations are required to implement a federal or State mandate; and

e. one year after the date of enactment of this act and annually thereafter, prepare a report which shall be transmitted to the Governor and the Legislature summarizing the activities of the ombudsman, including, but not limited to, a description of the permits, permit mechanisms, and permit processes that have been streamlined, a list of permit applications in which the ombudsman has participated, any rules or regulations that have been reviewed and the consistency determinations made by the ombudsman, and a report concerning the programs established for the registration and qualification of professionals by the Director of the Division of Smart Growth in the Department of Environmental Protection, the Department of Transportation, and the Department of Community Affairs.

As used in this section, "State agency" shall not include the Pinelands Commission established pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.), the Highlands Water Protection and Planning Council established pursuant to P.L.2004, c. (C. ) (pending before the Legislature as Senate Bill No. 1), or the New Jersey Meadowlands Commission established pursuant to P.L.1968, c.404 (C.13:17-1 et seq.), or any independent authority or commission.

C.13:1D-144 Definitions relative to smart growth in DEP and expedited permits.

4. As used in sections 5 and 10 of P.L.2004, c.89 (C.13:1D-145 and C.13:1D-146):

"Applicant" means any person applying for a permit pursuant to sections 5 or 10 of P.L.2004, c.89 (C.13:1D-145 or C.13:1D-146);

"Ombudsman" or "Smart Growth Ombudsman" means the Smart Growth Ombudsman appointed by the Governor pursuant to section 2 of P.L.2004, c.89 (C.52:27D-10.3);

"Permit" means any permit or approval issued by the Department of Environmental Protection pursuant to any law, or any rule or regulation adopted pursuant thereto, provided that "permit" shall not include any approval of a grant, or a permit issued pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), or the "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1 et seq.);

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State, or State or interstate agency;

and

"Smart growth area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or a designated growth center in an endorsed plan; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection.

C.13:1D-145 Division of Smart Growth established in DEP.

5. a. There is established in the Department of Environmental Protection a Division of Smart Growth under the direction of a director, who shall be appointed by the Governor and report to the Commissioner of Environmental Protection. The director shall review and take action on permits for which the applicant has requested expedited review pursuant to this section.

b. The director shall coordinate and expedite the review of permits issued by the division with the Smart Growth Ombudsman appointed pursuant to section 2 of P.L.2004, c.89 (C.52:27D-10.3).

c. (1) An applicant may request an expedited permit application review for a proposed project in a smart growth area. In order to qualify for expedited permit application review pursuant to this section, an applicant shall include with a permit application all necessary documentation, a request for expedited permit application review, and the permit fee established in accordance with subsection d. of this section. The permit application shall be signed by the applicant and by a professional qualified and registered in accordance with subsection e. of this section, certifying that a permit application is complete and that the statutory and regulatory requirements for the permit have been met by the applicant. A copy of the application and the request shall also be submitted to the ombudsman and to the clerk of the municipality and the clerk of the county in which the proposed project is located. A permit application that qualifies for expedited permit application review pursuant to this section shall be subject to the following time frames:

(a) the division shall notify an applicant within 20 days after the filing date if the permit application lacks a submission identified on a checklist therefor, or a submission has not been completed. If an application, including the permit fee and all necessary documentation, is determined to be complete, or if a notice of incompleteness is not provided within 20 days after the filing of the application, the application shall be deemed complete for purposes of commencing a technical review. In the case of a permit application affecting wetlands, a complete application shall include an effective letter of interpretation issued by the department concerning the delineation of the wetlands;

(b) (i) except as otherwise provided in subparagraph (ii) of this subparagraph, the division shall notify an applicant if the permit application is technically complete or issue a notice of deficiency within 45 days after the filing of the application. If an application is determined to be technically complete, or if a notice of deficiency is not issued within 45 days after the filing of the application, the application shall be deemed technically complete. A notice of deficiency shall itemize all deficiencies that must be addressed in order for the application to be determined technically complete. A notice of deficiency shall be deemed exclusive and further review for technical completeness shall be limited to the items so identified;

(ii) in the case of water allocation permits issued pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from an unconfined aquifer or surface water body and New Jersey Pollutant Discharge Elimination System permits issued pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) for a discharge of 1,000,000 gallons per day or greater, the division shall notify an applicant if the permit application is technically complete or issue a notice of deficiency within 60 days after filing of the application. If an application is determined to be technically complete, or if a notice of deficiency is not issued within 60 days after filing of the application, the application shall be deemed technically complete;

(c) except as provided in subparagraphs (e) and (f) of this paragraph, the division shall take action on a technically complete permit application within 45 days, except that this time period may be extended for a 30-day period by the mutual consent of the applicant and the department. Except for any New Jersey Pollutant Discharge Elimination System permit issued pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) in the event that the department fails to take action on an application for a permit within the 45-day period specified herein, or within the periods set forth in subparagraphs (e) and (f) of this paragraph, then the application shall be deemed to have been approved;

(d) if more than one notice of deficiency is issued by the division, the applicant may request an expedited hearing in accordance with section 14 of P.L.2004, c.89 (C.52:14F-17) to determine whether the application is technically complete;

(e) in the cases of water allocation permits issued pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from a confined aquifer and New Jersey Pollutant Discharge Elimination System permits issued pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) for a discharge of less than 1,000,000 gallons per day, after a permit application is deemed complete, and after a 30-day public comment period, the department shall take action on the permit within five days if minimal or no comments were received in the public comment period, or within 15 days if more than minimal comments were received in the public comment period; and

(f) in the cases of water allocation permits issued pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.) and P.L.1993, c.202 (C.58:1A-7.3 et seq.) for a diversion from an unconfined aquifer or surface water body and New Jersey Pollutant Discharge Elimination System permits issued pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) for a discharge of 1,000,000 gallons per day or greater, after a permit application is deemed complete, and after a 30-day public comment period, the department shall take action on the permit within five days if minimal or no comments were received in the public comment period, or within 45 days if more than minimal comments were received in the public comment period.

(2) Nothing in this subsection shall supersede shorter periods for department action provided by applicable law.

d. The direct and indirect costs of personnel, equipment, operating expenses, and activities of the division shall be funded solely through permit fees for expedited permits issued in the smart growth areas pursuant to this section. The department shall, in consultation with the ombudsman, establish permit fees necessary for the department to administer and enforce the expedited permit application review program established pursuant to this section. The fee schedule established pursuant to this subsection shall include the department's pro rata share of the budget of the Smart Growth Ombudsman. Within 30 days after the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.), the department, in consultation with the ombudsman, shall publish a schedule of permit fees in the New Jersey Register and may amend the fee schedule as necessary. The fee schedule may provide for increased fees for complex projects.

e. (1) The Director of the Division of Smart Growth shall, within 120 days after the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.), develop a program for the qualification and registration of professionals who shall certify that a permit application is complete and that the statutory and regulatory requirements for the permit have been met by the applicant. The requirements for qualification and registration may include, but shall not be limited to, professional licensure relevant to the subject matter of the permit, a review of projects undertaken by the professional applying for qualification and registration, and a review of the nature of the professional's services provided on each project.

(2) The director shall include in the program for the qualification and registration of professionals any standards or requirements necessary for proper administration and enforcement of the provisions of P.L.2004, c.89 (C.52:27D-10.2 et al.), and shall provide for the suspension or revocation of the qualification and registration of professionals as provided in this subsection.

(3) Any person who negligently violates any requirement of the program established by the department for the qualification and registration of professionals may lose professional licensure for one year, may be barred from qualification and registration for a period of three years, and the firm with which that individual is associated may be barred from seeking qualification and registration for a period of three years.

(4) If a person willfully or recklessly violates any requirement of the program

established by the department for the qualification and registration of professionals, that individual shall lose professional licensure for one year, shall be permanently barred from qualification and registration, and the firm with which that individual is associated shall be permanently barred from seeking qualification and registration.

(5) Prior to any suspension, revocation, or failure to renew a person's qualification and registration, the department shall afford the person or firm an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), except that, if the department has reason to believe that a condition exists which poses an imminent threat to the public health, safety or welfare, it may order the immediate suspension of qualification and registration pending the outcome of the hearing.

f. The Director of the Division of Smart Growth, after consultation with the Smart Growth Ombudsman, may adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as appropriate to implement the requirements of this section and to encourage development in the smart growth areas.

g. Nothing in this section shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.

h. Applications for an expedited permit application review pursuant to subsection c. of this section shall not be accepted until 120 days following the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.). Applications pending on the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.) shall, upon request of the applicant, be processed in the expedited permit application review program when it becomes effective. A permit application that is the subject of a request under this provision shall be transferred to the Division of Smart Growth for processing in accordance with P.L.2004, c.89 (C.52:27D-10.2 et al.).

C.27:1E-1 Definitions relative to smart growth in DOT and expedited permits.

6. As used in section 7 of P.L.2004, c.89 (C.27:1E-2):

"Applicant" means any person applying for a permit pursuant to section 7 or 10, as appropriate, of P.L.2004, c.89 (C.27:1E-2 or C.13:1D-146);

"Ombudsman" or "Smart Growth Ombudsman" means the Smart Growth Ombudsman appointed by the Governor pursuant to section 2 of P.L.2004, c.89 (C.52:27D-10.3);

"Permit" means any permit or approval issued by the Department of Transportation pursuant to any law or any rule or regulation adopted pursuant thereto;

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State, or State or interstate agency; and

"Smart growth area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or a designated growth center in an endorsed plan; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection.

C.27:1E-2 Division of Smart Growth established in DOT.

7. a. There is established in the Department of Transportation a Division of Smart Growth under the direction of a director, who shall be appointed by the Governor and report to the Commissioner of Transportation. The director shall review and take action on permits for which the applicant has requested expedited review pursuant to this section.

b. The director shall coordinate and expedite the review of permits issued by the division with the Smart Growth Ombudsman appointed pursuant to section 2 of P.L.2004, c.89 (C.52:27D-10.3).

c. (1) An applicant may request an expedited permit application review for a proposed project in a smart growth area. In order to qualify for expedited permit application review

pursuant to this section, an applicant shall include with a permit application all necessary documentation, a request for expedited permit application review, and the permit fee established in accordance with subsection d. of this section. The permit application shall be signed by the applicant and by a professional qualified and registered in accordance with subsection e. of this section, certifying that a permit application is complete and that the statutory and regulatory requirements for the permit have been met by the applicant. A copy of the application and the request shall also be submitted to the ombudsman and to the clerk of the municipality and the clerk of the county in which the proposed project is located. A permit application that qualifies for expedited permit application review pursuant to this section shall be subject to the following time frames:

(a) the division shall notify an applicant within 20 days after the filing date if the permit application lacks a submission identified on a checklist therefor, or a submission has not been completed. If an application, including the permit fee and all necessary documentation, is determined to be complete, or if a notice of incompleteness is not provided within 20 days after the filing of the application, the application shall be deemed complete for purposes of commencing a technical review;

(b) the division shall notify an applicant if the permit application is technically complete or issue a notice of deficiency within 45 days after the filing of the application. If an application is determined to be technically complete or if a notice of deficiency is not issued within 45 days after the filing of the application, the application shall be deemed technically complete. A notice of deficiency shall itemize all deficiencies that must be addressed in order for the application to be determined technically complete. A notice of deficiency shall be deemed exclusive and further review for technical completeness shall be limited to the items so identified;

(c) the division shall take action on a technically complete permit application within 45 days, except that this time period may be extended for a 30-day period by the mutual consent of the applicant and the department. In the event that the department fails to take action on an application for a permit within the 45-day period specified herein, then the application shall be deemed to have been approved; and

(d) if more than one notice of deficiency is issued by the division, the applicant may request an expedited hearing in accordance with section 14 of P.L.2004, c.89 (C.52:14F-17) to determine whether the application is technically complete.

(2) Nothing in this subsection shall supersede shorter periods for department action provided by applicable law.

d. The direct and indirect costs of personnel, equipment, operating expenses, and activities of the division shall be funded solely through permit fees for permits issued in the smart growth areas. The department shall, in consultation with the ombudsman, establish permit fees necessary for the department to administer and enforce the program. The fee schedule established pursuant to this subsection shall include the department's pro rata share of the budget of the Smart Growth Ombudsman. Within 30 days after the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.), the department, in consultation with the ombudsman, shall publish a schedule of permit fees in the New Jersey Register and may amend the fee schedule as necessary. The fee schedule may provide for increased fees for complex projects.

e. (1) The Director of the Division of Smart Growth shall, within 120 days after the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.), develop a program for the qualification and registration of professionals who shall certify that a permit application is complete and that the statutory and regulatory requirements for the permit have been met by the applicant. The requirements for qualification and registration may include, but shall not be limited to, professional licensure relevant to the subject matter of the permit, a review of projects undertaken by the professional applying for qualification and registration, and a review of the nature of the professional's services provided on each project.

(2) The director shall include in the program for the qualification and registration of professionals any standards or requirements necessary for proper administration and enforcement of the provisions of P.L.2004, c.89 (C.52:27D-10.2 et al.), and shall provide for the suspension or revocation of the qualification and registration of professionals as provided in this subsection.

(3) Any person who negligently violates any requirement of the program established by the department for the qualification and registration of professionals may lose professional licensure for one year, may be barred from qualification and registration for a period of three years, and the firm with which that individual is associated may be barred from seeking qualification and registration for a period of three years.

(4) If a person willfully or recklessly violates any requirement of the program established by the department for the qualification and registration of professionals, that individual shall lose professional licensure for one year, shall be permanently barred from qualification and registration, and the firm with which that individual is associated shall be permanently barred from seeking qualification and registration.

(5) Prior to any suspension, revocation, or failure to renew a person's qualification and registration, the department shall afford the person or firm an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), except that, if the department has reason to believe that a condition exists which poses an imminent threat to the public health, safety or welfare, it may order the immediate suspension of qualification and registration pending the outcome of the hearing.

f. The director, after consultation with the Smart Growth Ombudsman, may adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as appropriate to implement the requirements of this section and to encourage development in the smart growth areas.

g. Nothing in this section shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.

h. Applications for an expedited permit application review pursuant to subsection c. of this section shall not be accepted until 120 days following the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.). Applications pending on the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.) shall, upon request of the applicant, be processed in the expedited permit application review program when it becomes effective. A permit application that is the subject of a request under this provision shall be transferred to the Division of Smart Growth for processing in accordance with P.L.2004, c.89 (C.52:27D-10.2 et al.).

#### C.52:27D-10.5 Definitions relative to smart growth in DCA and expedited permits.

8. As used in section 9 of P.L.2004, c.89 (C.52:27D-10.6):

"Applicant" means any person applying for a permit pursuant to section 9 of P.L.2004, c.89 (C.52:27D-10.6);

"Ombudsman" or "Smart Growth Ombudsman" means the Smart Growth Ombudsman appointed by the Governor pursuant to section 2 of P.L.2004, c.89 (C.25:27D-10.3);

"Permit" means any permit or approval required as a condition of development or redevelopment and issued by the Department of Community Affairs pursuant to any law or any rule or regulation adopted pursuant thereto;

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State, or State or interstate agency; and

"Smart growth area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or a designated growth center in an endorsed plan; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection.

#### C.52:27D-10.6 Division of Smart Growth established in DCA.

9. a. There is established in the Department of Community Affairs a Division of Smart Growth under the direction of a director, who shall be appointed by the Governor and report to the Commissioner of Community Affairs. The director shall review and take action on permits for which the applicant has requested expedited review pursuant to this section.

b. The director shall coordinate and expedite the review of permits issued by the division with the Smart Growth Ombudsman appointed pursuant to section 2 of P.L.2004, c.89 (C.52:27D-10.3).

c. (1) An applicant may request an expedited permit application review for a proposed project in a smart growth area. In order to qualify for expedited permit application review pursuant to this section, an applicant shall include with a permit application all necessary documentation, a request for expedited permit application review, and the permit fee established in accordance with subsection d. of this section. The permit application shall be signed by the applicant and by a professional qualified and registered in accordance with subsection e. of this section, certifying that a permit application is complete and that the statutory and regulatory requirements for the permit have been met by the applicant. A copy of the application and the request shall also be submitted to the ombudsman and to the clerk of the municipality and the clerk of the county in which the proposed project is located. A permit application that qualifies for expedited permit application review pursuant to this section shall be subject to the following time frames:

(a) the division shall notify an applicant within 20 days after the filing date if the permit application lacks a submission identified on a checklist therefor, or a submission has not been completed. If an application, including the permit fee and all necessary documentation, is determined to be complete or if a notice of incompleteness is not provided within 20 days after the filing of the application, the application shall be deemed complete for purposes of commencing a technical review;

(b) the division shall notify an applicant if the permit application is technically complete or issue a notice of deficiency within 45 days after the filing of the application. If an application is determined to be technically complete, or if a notice of deficiency is not issued within 45 days after the filing of the application, the application shall be deemed technically complete. A notice of deficiency shall itemize all deficiencies that must be addressed in order for the application to be determined technically complete. A notice of deficiency shall be deemed exclusive and further review for technical completeness shall be limited to the items so identified;

(c) the division shall take action on a technically complete permit application within 45 days, except that this time period may be extended for a 30-day period by the mutual consent of the applicant and the department. In the event that the department fails to take action on an application for a permit within the 45-day period specified herein, then the application shall be deemed to have been approved; and

(d) if more than one notice of deficiency is issued by the division, the applicant may request an expedited hearing in accordance with section 14 of P.L.2004, c.89 (C.52:14F-17) to determine whether the application is technically complete.

(2) Nothing in this subsection shall supersede shorter periods for department action provided by applicable law.

d. The direct and indirect costs of personnel, equipment, operating expenses, and activities of the division shall be funded solely through permit fees for permits issued in the smart growth areas. The department shall, in consultation with the ombudsman, establish permit fees necessary for the department to administer and enforce the program. The fee schedule established pursuant to this subsection shall include the department's pro rata share of the budget of the Smart Growth Ombudsman. Within 30 days after the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.), the department, in consultation with the ombudsman, shall publish a schedule of permit fees in the New Jersey Register and may amend the fee schedule as necessary. The fee schedule may provide for increased fees for complex projects.

e. (1) The Director of the Division of Smart Growth shall, within 120 days after the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.), develop a program for the qualification and registration of professionals who shall certify that a permit application is complete and that the statutory and regulatory requirements for the permit have been met by the applicant. The requirements for qualification and registration may include, but shall not be limited to, professional licensure relevant to the subject matter of the permit, a review of projects undertaken by the professional applying for qualification and registration, and a review of the nature of the professional's services provided on each project.

(2) The director shall include in the program for the qualification and registration of professionals any standards or requirements necessary for proper administration and enforcement of the provisions of P.L.2004, c.89 (C.52:27D-10.2 et al.), and shall provide for the suspension or revocation of the qualification and registration of professionals as provided in this subsection.

(3) Any person who negligently violates any requirement of the program established by the department for the qualification and registration of professionals may lose professional licensure for one year, may be barred from qualification and registration for a period of three



years, and the firm with which that individual is associated may be barred from seeking qualification and registration for a period of three years.

(4) If a person willfully or recklessly violates any requirement of the program established by the department for the qualification and registration of professionals, that individual shall lose professional licensure for one year, shall be permanently barred from qualification and registration, and the firm with which that individual is associated shall be permanently barred from seeking qualification and registration.

(5) Prior to any suspension, revocation, or failure to renew a person's qualification and registration, the department shall afford the person or firm an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), except that, if the department has reason to believe that a condition exists which poses an imminent threat to the public health, safety or welfare, it may order the immediate suspension of qualification and registration pending the outcome of the hearing.

f. The director, after consultation with the Smart Growth Ombudsman, may adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as appropriate to implement the requirements of this section and to encourage development in the smart growth areas.

g. Nothing in this section shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.

h. Applications for an expedited permit application review pursuant to subsection c. of this section shall not be accepted until 120 days following the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.). Applications pending on the date of enactment of P.L.2004, c.89 (C.52:27D-10.2 et al.) shall, upon request of the applicant, be processed in the expedited permit application review program when it becomes effective. A permit application that is the subject of a request under this provision shall be transferred to the Division of Smart Growth for processing in accordance with P.L.2004, c.89 (C.52:27D-10.2 et al.).

C.13:1D-146 Additional provisions concerning expedited permit mechanisms.

10. a. In addition to the provisions of subsection c. of section 5, subsection c. of section 7 and subsection c. of section 9 of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2 and C.52:27D-10.6), expedited permit mechanisms, such as a permits-by-rule, general permits, and certification by professionals qualified and registered in accordance with subsection e. of section 5, subsection e. of section 7 or subsection e. of section 9 of P.L.2004, c.89 (C.13:1D-145, C.27:1-2 or C.52:27D-10.6), as appropriate, shall be made available in the smart growth areas as determined appropriate by the Commissioner of Environmental Protection, the Commissioner of Transportation, or the Commissioner of Community Affairs, as appropriate, after consultation with the Smart Growth Ombudsman.

b. The following permits or approvals in smart growth areas shall be by permit-by-rule upon certification of compliance with statutory and regulatory requirements by a professional qualified and registered in accordance with subsection e. of section 5 of P.L.2004, c.89 (C.13:1D-145):

(1) treatment works approvals pursuant to section 6 of P.L.1977, c.74 (C.58:10A-6) for sewer lines, pumping stations, force mains or service connections in sewer service areas;

(2) water quality management plan amendments adopted pursuant to the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.) for new or expanded sewer service areas associated with an existing wastewater treatment facility;

(3) water main extension permits pursuant to the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.) where a public water system has available, uncommitted resources;

(4) well drilling permits pursuant to section 10 of P.L.1947, c.377 (C.58:4A-14); and

(5) the following general permits issued by the Department of Environmental Protection for activities in the waterfront development area designated pursuant to R.S.12:5-3 and in accordance with rules and regulations in effect on June 14, 2004:

(a) the landfall of utilities including cable, including electric, television and fiber optics, telecommunication, petroleum, natural gas, water and sanitary sewer lines constructed in tidal water bodies authorized pursuant to R.S.12:5-1 et seq. or the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.);

(b) minor maintenance dredging in man-made lagoons; and

(c) the voluntary reconstruction of a non-damaged legally constructed, currently habitable

residential or commercial development landward of the existing footprint of development.

c. The Director of the Division of Smart Growth established in the Department of Environmental Protection pursuant to subsection a. of section 5 of P.L.2004, c.89 (C.13:1D-145) shall take action on the following wetlands general permits issued by the Department of Environmental Protection pursuant to the Freshwater Wetlands Protection Act Rules adopted under the authority of the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.) and in effect on June 14, 2004, provided the application includes an effective letter of interpretation issued by the department pursuant to section 8 of P.L.1987, c.156 (C.13:9B-8), in smart growth areas within 45 days upon certification of compliance with statutory and regulatory requirements by a professional qualified and registered in accordance with subsection e. of section 5 of P.L.2004, c.89 (C.13:1D-145):

(1) regulated activities in freshwater wetlands, transition areas, or State open waters, necessary for the construction or maintenance of an underground utility line provided that any permanent above-ground disturbance of wetlands, transition area, or State open waters shall be no greater than one acre;

(2) a regulated activity in a freshwater wetland, transition area, or State open water, if the freshwater wetland or State open water is not part of a surface water tributary system discharging into an inland lake or pond, or a river or stream, and provided the activity shall disturb no more than one-half acre of a freshwater wetland, transition area, or State open water up to one-half acre;

(3) minor road crossings, including attendant features such as shoulders, sidewalks and embankments, provided that the total area of disturbance shall not exceed one-quarter acre of freshwater wetland, transition area, and State open water, without regard to the distance or length of road, to access developable uplands;

(4) regulated activities in freshwater wetlands, transition areas, or State open waters, necessary to stabilize the bank of a water body in order to reduce or prevent erosion through bioengineering methods;

(5) regulated activities in freshwater wetlands, transition areas, or State open waters, necessary for the construction of an above ground utility line;

(6) the disturbance of certain degraded freshwater wetlands, transition areas, or State open waters necessary for redevelopment of an area previously significantly disturbed by industrial or commercial activities provided that the disturbance shall not exceed one-tenth acre of freshwater wetlands and one-quarter acre total disturbance including transition areas;

(7) regulated activities in freshwater wetlands or transition areas, necessary for the construction of additions or appurtenant improvements to residential dwellings lawfully existing prior to July 1, 1988, provided that the improvements or additions require less than a cumulative surface area of 750 square feet of fill or disturbance and shall not result in new alterations to a freshwater wetland outside of the 750 square foot area;

(8) regulated activities in freshwater wetlands, transition areas and State open waters necessary for surveying and investigative activities, including: soil borings dug by machine; hand dug soil borings larger than three feet in diameter or depth; cutting of vegetation by machine for a survey line; cutting of vegetation by hand for a survey line; and digging of exploratory pits and other temporary activities necessary for a geotechnical or archaeological investigation; and

(9) regulated activities in freshwater wetlands and transition areas necessary for the repair or modification of a malfunctioning individual subsurface sewage disposal system provided that the activity shall disturb no more than one-quarter acre of freshwater wetlands or transition areas combined.

d. The Director of the Division of Smart Growth established in the Department of Environmental Protection pursuant to subsection a. of section 5 of P.L.2004, c.89 (C.13:1D-145) shall take action on minor stream encroachment permits for an encroachment project that does not require hydrologic or hydraulic review; does not require review of any stormwater detention basin; does not increase potential for erosion or sedimentation in stream and does not require substantial channel modification or relocation; and does not need to be reviewed for the zero percent or 20 percent net fill limitations other than that associated with a single family dwelling, in smart growth areas within 30 days upon certification of compliance with statutory and regulatory requirements by a professional qualified and registered in accordance with subsection e. of section 5 of P.L.2004, c.89 (C.13:1D-145).

e. The following Highway Occupancy permits or approvals in smart growth areas shall be by permit-by-rule upon certification of compliance with statutory and regulatory requirements

by a professional qualified and registered in accordance with subsection e. of section 7 of P.L.2004, c.89 (C.27:1E-2):

- (1) drainage;
- (2) utility openings; and
- (3) utility poles (new and relocation).

f. Notwithstanding the provisions of P.L.1987, c.156 (C.13:9B-1 et seq.), or any rule or regulation adopted pursuant thereto, to the contrary, an activity conducted under the authority of a general permit issued by the Department of Environmental Protection pursuant to section 23 of P.L.1987, c.156 (C.13:9B-23) may occur in a vernal habitat located within a smart growth area or in a transition area adjacent to a vernal habitat located within a smart growth area.

g. A copy of the application for a general permit or a notice of the permit by rule provided pursuant to this section shall be submitted to the ombudsman and to the clerk of the municipality and the clerk of the county in which the proposed project is located.

h. Nothing in this section shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.

C.52:14F-14 Definitions relative to expedited appeals in OAL.

11. As used in sections 12 through 18 of P.L.2004, c.89 (C.52:14F-15 through C.52:14F-21):

"Applicant" means any person applying for a permit pursuant to section 3, 5, 7, 9 or 10 of P.L.2004, c.89 (C.52:27D-10.4, C.13:1D-145, C.27:1E-2, C.52:27D-10.6 or C.13:1D-146);

"Ombudsman" or "Smart Growth Ombudsman" means the Smart Growth Ombudsman appointed by the Governor pursuant to section 2 of P.L.2004, c.89 (C.52:27D-10.3);

"Permit" means any permit or approval issued by the Department of Environmental Protection, pursuant to any law, or any rule or regulation adopted pursuant thereto, provided that "permit" shall not include any approval of a grant, or a permit issued pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), or the "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1 et seq.), any permit or approval issued by the Department of Transportation pursuant to any law, or any rule or regulation adopted pursuant thereto, or any permit or approval required as a condition of development or redevelopment issued by the Department of Community Affairs pursuant to any law or any rule or regulation adopted pursuant thereto;

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State, or State or interstate agency; and

"Smart growth area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or a designated growth center in an endorsed plan; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8); an urban enterprise zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection.

C.52:14F-15 Expedited appeal of contested permit action.

12. Upon the request of the applicant and in accordance with sections 14, 15, and 16 of P.L. 2004, c.89 (C.52:14F-17, C.52:14F-18 and C.52:14F-19), the Office of Administrative Law shall provide for the expedited appeal of any contested permit action for a proposed project in a smart growth area. An applicant who does not exercise this option retains the right to an administrative hearing and decision on the permit application pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.52:14F-16 Smart Growth Unit established in OAL.

13. a. There is hereby established within the Office of Administrative Law a Smart Growth Unit consisting of administrative law judges having expertise in the matters heard pursuant to this section. All cases transmitted to the Office of Administrative Law pursuant to this section shall be assigned to and adjudicated by the administrative law judges in the Smart Growth Unit.

b. The Governor with the advice and consent of the Senate shall appoint administrative law judges to the Smart Growth Unit. Administrative law judges appointed to the Smart Growth Unit shall have expertise in the relevant subject areas pertaining to P.L.2004, c.89 (C.52:27D-10.2 et al.) and shall be subject to the terms of appointment and employment set forth in sections 4 and 5 of P.L.1978, c.67 (C.52:14F-4 and C.52:14F-5). The Director of the Office of Administrative Law and Chief Administrative Law Judge shall assign an administrative law judge as the assignment judge for the unit.

C.52:14F-17 Transmittal of administrative record.

14. a. Within 15 days after the receipt by the Division of Smart Growth of notice of an applicant's request for an expedited review pursuant to subparagraph (d) of paragraph (1) of subsection c. of section 5, subparagraph (d) of paragraph (1) of subsection c. of section 7, or subparagraph (d) of paragraph (1) of subsection c. of section 9 of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2 or C.52:27D-10.6), as appropriate, the Division of Smart Growth shall transmit to the clerk of the Office of Administrative Law the administrative record which shall consist of:

- (1) the request for an expedited review of the application;
- (2) the application;
- (3) documents the applicant filed in support of the application;
- (4) the qualified and registered professional's certification that the application is complete and meets all statutory and regulatory requirements for approval;
- (5) the Division of Smart Growth's notices of deficiency, if any, that the application is incomplete;
- (6) the Division of Smart Growth's documentation, if any, in support of its determination that the application is incomplete; and
- (7) the applicant's request for an expedited hearing.

b. The case shall be assigned to an administrative law judge who shall be a member of the Smart Growth Unit. Within 15 days after the filing of the case with the clerk of the Office of Administrative Law, the parties shall file briefs with the administrative law judge. There shall be no presumptions in favor of either party. No other evidence shall be admitted or relied upon, except by consent of the parties and with approval of the administrative law judge. Discovery shall not be available, except by consent of the parties. The standard of review shall be by the preponderance of the evidence.

c. Within 30 days after the date of submission of the briefs, the administrative law judge shall issue a written decision as to whether the application is complete. The time limits established herein shall not be extended except by consent of the parties.

d. If the administrative law judge decides that the application is complete, the Director of the Division of Smart Growth shall take action to approve, approve with conditions or deny the permit application within 45 days after the receipt of the decision.

e. The decision of the administrative law judge on the issue of completeness of the application shall be the final decision binding on the parties and shall not be subject to further review or appeal by either the Division of Smart Growth established pursuant to section 5, 7 or 9 of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2 or C.52:27D-10.6), as appropriate, or the applicant.

f. An applicant who does not request an expedited review pursuant to subparagraph (d) of paragraph (1) of subsection c. of section 5, subparagraph (d) of paragraph (1) of subsection c. of section 7 or subparagraph (d) of paragraph (1) of subsection c. of section 9 of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2 or C.52:27D-10.6), as appropriate, retains the right to an administrative hearing and decision on the permit application pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.52:14F-18 Denial of expedited permit, expedited hearing.

15. a. If an application for a permit for a proposed project in a smart growth area is denied, the Office of Administrative Law shall provide an expedited hearing to review the denial of the permit upon the request of the applicant. An applicant who does not request a hearing pursuant to this section retains the right to an administrative hearing and decision on the permit

application pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. Within 15 days after receipt by the Division of Smart Growth of notice of an applicant's request for an expedited hearing, the division shall transmit to the clerk of the Office of Administrative Law the administrative record which shall consist of:

- (1) the application;
- (2) documents the applicant filed in support of the application;
- (3) the qualified and registered professional's certification that the application is complete and meets all statutory and regulatory requirements for approval;
- (4) the Division of Smart Growth's notices of deficiency, if any, that the application is incomplete;
- (5) the Division of Smart Growth's documentation, if any, in support of its determination to deny the application; and
- (6) the applicant's request for an expedited hearing and decision.

c. The case shall be assigned to an administrative law judge who shall be a member of the Smart Growth Unit. The administrative law judge shall establish an expedited briefing and hearing schedule. Any hearings shall be concluded within 45 days after receipt of the case by the administrative law judge.

d. Nothing herein shall diminish the applicant's obligation to prove in the application process that it satisfies standards for approval of an application. There shall be no presumptions in favor of either party as to the underlying permit decision. The standard of review shall be by the preponderance of the evidence.

e. Within 45 days after the closing of the record, the administrative law judge shall issue a written decision as to whether the applicant has satisfied the standards required for the permit. The time limits established herein shall not be extended except by consent of the parties and the administrative law judge.

f. If the administrative law judge decides that the application should be approved, the Director of the Division of Smart Growth shall take action to approve or approve with conditions the permit within 10 days after receipt of the decision.

g. The decision of the administrative law judge shall be the final decision binding on the parties and shall not be subject to further review or appeal by either the Division of Smart Growth established pursuant to section 5, 7 or 9 of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2 or C.52:27D-10.6), as appropriate, or the applicant.

C.52:14F-19 Expedited hearing on terms or conditions on permits in smart growth areas.

16. a. If an application for a permit for a proposed project in a smart growth area is approved by the Division of Smart Growth with terms or conditions, the Office of Administrative Law shall provide an expedited hearing and decision on any terms or conditions of such permit upon the request of the applicant. An applicant who does not request an expedited hearing pursuant to this section retains the right to an administrative hearing and decision on the permit application pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. Within 15 days after receipt by the agency of notice of an applicant's request for an expedited hearing and decision, the Division of Smart Growth shall transmit to the clerk of the Office of Administrative Law the case record which shall consist of:

- (1) the application;
- (2) documents the applicant filed in support of the application;
- (3) the qualified and registered professional's certification that the application is complete and meets all statutory and regulatory requirements for approval;
- (4) the Division of Smart Growth's notices of deficiency, if any, that the application is incomplete;
- (5) the Division of Smart Growth's documentation, if any, in support of its determination to include the terms or conditions that are being contested; and
- (6) the applicant's request for an expedited hearing and decision.

c. The case shall be assigned to an administrative law judge who shall be a member of the Smart Growth Unit. The administrative law judge shall establish an expedited briefing and hearing schedule. Any hearings shall be concluded within 45 days after receipt of the case by the administrative law judge.

d. Nothing herein shall diminish the applicant's obligation to prove in the application

process that it satisfies standards for approval of an application. There shall be no presumptions in favor of either party as to the underlying permit decision. The standard of review shall be by the preponderance of the evidence.

e. Within 45 days after the closing of the record, the administrative law judge shall issue a written decision as to whether the applicant has satisfied the standards required for the permit. The time limits established herein shall not be extended except by consent of the parties and the Administrative Law Judge.

f. If the administrative law judge decides that a permit term or condition should be deleted or amended, the Director of the Division of Smart Growth shall take action to revise the terms or conditions of the permit within 10 days after receipt of the decision.

g. The decision of the administrative law judge shall be the final decision binding on the parties and shall not be subject to further review or appeal by either the Division of Smart Growth established pursuant to section 5, 7 or 9 of P.L.2004, c.89 (C.13:1D-145, C.27:1E-2 or C.52:27D-10.6), as appropriate, or the applicant.

#### C.52:14F-20 Filing fees in Smart Growth Unit.

17. The Office of Administrative Law shall have authority to establish filing fees, payable by the applicant, necessary to administer the Smart Growth Unit, including the direct and indirect costs for personnel, operating expenses, equipment and activities of the Smart Growth Unit. These filing fees shall be published in the New Jersey Register and shall be effective upon publication therein.

#### C.52:14F-21 OAL rules, regulations.

18. The Office of Administrative Law may adopt those rules and regulations that it deems necessary to carry out the requirements of P.L.2004, c.89 (C.52:27D-10.2 et al.), which shall be effective upon filing.

#### C.13:1D-147 Construction of act relative to preservation area of Highlands Region.

19. Nothing in this act shall be construed to apply to, or affect in any way, the preservation area of the Highlands Region as defined pursuant to P.L.2004, c.120 (C.13:20-1 et al.), or the authority of any State department or agency to adopt any rules and regulations for the preservation area.

20. This act shall take effect immediately.

Approved July 9, 2004.