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ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
DIVISION OF LAND USE REGULATION

Coastal Zone Management rules

Proposed Amendments: N.J.A.C. 7:7E-3.21, 3.23, 3.49, and 8.14

Authorized By: Mark N. Mauriello, Acting Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 13:19-1 et seq., 12:5-3, and 13:9A-1 et seq.

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

DEP Docket Number: 22-08-12/699

Proposal Number:

A public hearing concerning this proposal will be held on Thursday, February 19, 2009 at 1:00 P.M., at:

City Council Chambers
City of Atlantic City
1301 Bacharach Blvd.
Atlantic City, New Jersey 08401

Submit written comments by {60 days after publication} to:

Gary J. Brower, Esq.
Office of Legal Affairs

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Attn: DEP Docket Number 22-08-12/699
NJ Department of Environmental Protection
401 East State Street, Floor 4
P.O. Box 402
Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper in order to facilitate incorporation of submitted comments into its comment-response document. For this purpose, the comments on disk or CD should not be access-restricted (locked or read-only). The Department prefers Microsoft Word 6.0 or above. MacIntosh formats should not be used. Submission of a disk or CD is not a requirement. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

A copy of the proposal is available on paper or on disk by calling the Department at (609) 633-7021. The rule proposal can also be found at the Department's website (www.nj.gov/dep/rules). The agency proposal follows:

Summary

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

The Department is proposing amendments to the Coastal Zone Management rules, N.J.A.C. 7:7E. The Coastal Zone Management rules represent the State's substantive standards for the use and development of resources in New Jersey's coastal zone. The proposed amendments are detailed in the following paragraphs.

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N.J.A.C. 7:7E-3 Special Areas

Special Areas are types of coastal areas which merit focused attention and special management rules. Special Areas are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements, as to merit focused attention and special management rules. The Department is proposing to amend the special areas rules for Bay Islands at N.J.A.C. 7:7E-3.21, Filled Water's Edge at N.J.A.C. 7:7E-3.23, and Atlantic City at N.J.A.C. 7:7E-3.49.

N.J.A.C. 7:7E-3.21 Bay islands rule

Existing N.J.A.C. 7:7E-3.21(e) describes bay islands as former wetlands where uplands have been created by past filling, particularly with dredged material. These filled areas are adjacent to wetlands, intertidal flats, tidal waterways, shellfish beds and endangered and threatened wildlife species habitats. In many cases, development of the islands would pose a significant threat to these environmentally sensitive resources. Bay islands are also subject to flooding and, by virtue of their location, function as bridges between the mainland and barrier islands. If developed, these islands would pose an added storm evacuation problem. In addition, they are usually distant from public services and therefore are not suitable for development.

The bay islands rule is intended to protect these environmentally sensitive areas from development and to protect the public during coastal evacuations. However, the rule excludes certain bay islands from its requirements based on a review of the physical conditions of these islands, including environmental sensitivity, accessibility, and level of existing development and infrastructure. Further, it was determined that future development on these excluded islands would not pose a significant threat to environmental resources, nor would it adversely affect storm evacuation from the oceanfront barrier islands. The bay islands excluded from the rule have many characteristics in common, including, existing high intensity commercial and/or

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residential development, direct access to major roads and access to existing utility infrastructure to support development.

The Department is proposing to amend the list of excluded bay islands at N.J.A.C. 7:7E-3.21(b) to include the area known as Bader Field, Block 794, Lot 1 on the 2008 Atlantic City tax duplicate, Atlantic County. Bader Field, a former airport, is approximately 143 acres in size and is bounded by Route 40/322 (Albany Avenue) to the southwest, the Intracoastal Waterway to the southeast and Great Thorofare to the northeast. Bader Field is located adjacent to the area in Atlantic City known as Chelsea Heights, which is also on the list of excluded bay islands at N.J.A.C. 7:7E-3.21(b). Bader Field is serviced by public utilities including sewer, electric, gas and water.

Opened in the year 1910, Bader Field was authorized to provide passenger service in 1911. It remained in use until September, 2006. Bader Field is fully developed with two asphalt runways and support facilities. Bernie Robbins Stadium and the Flyers SkateZone are currently operating on a portion of Bader Field.

Bader Field has been developed with high intensity commercial and/or public development, has direct access to major roads and access to existing utility infrastructure to support development. Given that Bader Field shares the characteristics of other bay islands excluded from this rule, it is appropriate to add this area to the excluded bay islands. The addition of Bader Field to the list of areas not considered to be bay islands for the purposes of the Coastal Zone Management rules does not affect the necessity for any future development at Bader Field to comply with all other applicable requirements of the Coastal Zone Management rules.

N.J.A.C. 7:7E-3.23 Filled Water's Edge

Existing N.J.A.C. 7:7E-3.23 describes filled water's edge areas as existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to

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the water. The "waterfront portion" of filled water's edge is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line.

On filled water's edge sites within the CAFRA zone, the rules require the waterfront portion of the site to be developed with a water dependent use; developed with an at-grade deck open to the general public that is water oriented, unenclosed and surrounded by a public walkway landward of the mean high water line; or left undeveloped for future water dependent uses. In waterfront areas located outside of the CAFRA zone, a public walkway satisfies the requirement for development with a water dependent use (see N.J.A.C. 7:7E-3.23(f)). Walkways are particularly encouraged along developed, urban waterfront areas such as the Hudson, Delaware, Raritan and Passaic Rivers.

The Department is proposing to amend the filled water's edge rule to provide an additional option to satisfy the rule at Bader Field. Particularly, in addition to developing the waterfront portion of the site with a water dependent use, constructing an at-grade deck, or reserving it for a future water dependent use in accordance with N.J.A.C. 7:7E-3.23(c), the Department is proposing at N.J.A.C. 7:7E-3.23(g) that the requirements of N.J.A.C. 7:7E-3.23 may also be satisfied by installation of a public walkway at least 20 feet wide with a 40 feet wide right-of-way at Bader Field.

Bader Field is located at block 794, lot 1 in the City of Atlantic City, as shown on the 2008 Atlantic City tax duplicate. Atlantic City is unique along the eastern seaboard due to the legalization of casino gaming. Since casino gaming arrived in Atlantic City, the City underwent a transformation from seaside family resort to a densely developed urban center, much like the cities located along New Jersey's northern urban waterfront. Seaside communities in New Jersey are generally residential with commercial uses intermixed. The buildings themselves tend to be a maximum of five stories high with the exception of the occasional hotel or apartment building. Atlantic City, with its multiple high rise developments, highly developed commercial district, public transportation, and

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extensive infrastructure, more closely resembles an urban center than a seaside resort. The Coastal Zone Management rules categorize the City of Atlantic City as a “CAFRA urban center,” allowing for the placement of up to 90 percent impervious coverage on development sites, while a majority of other seaside communities are permitted a maximum of 30 percent impervious coverage. Thus, although Bader Field is located within the CAFRA zone, at build-out it will more closely resemble urban waterfront areas because of the anticipated type and intensity of development.

The waterfront portion of Bader Field (defined as, the area measured from the mean high water line that is at least equal in size to the area within 100 feet of navigable water—(see N.J.A.C. 7:7E-3.23(b)) is bordered by the Intracoastal Waterway to the southeast and Great Thorofare to the northeast, both of which receive a large volume of recreational boating traffic. Bader Field was an active airport until September of 2006 and is currently the site of Bernie Robbins Stadium and the Flyers SkateZone. It is zoned as a “Resort Commercial District” potentially allowing for development of the 143 acre area with a variety of uses including casino, hotel, retail, entertainment, residential and/or other commercial ventures. To date, Bader Field has not been developed with water dependent uses.

Given the likelihood that development on Bader Field will more closely resemble development in the urban waterfront region rather than that found in other seaside communities in the CAFRA zone, the Department finds it appropriate to allow the option to install a public walkway along the waterfront instead of requiring development with a water dependent use or at-grade deck in accordance with N.J.A.C. 7:7E-3.23(c). The Department is proposing to require a minimum twenty-foot wide walkway with a minimum forty-foot wide right-of-way to facilitate public access and allow for the incorporation of appropriate amenities such as lighting, benches, and landscaping.

The Department is proposing to recodify existing N.J.A.C. 7:7E-3.23(g) through (j) as N.J.A.C. 7:7E-3.23(h) through (k) with no change in text.

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7:7E-3.49 Atlantic City

N.J.A.C. 7:7E-3.49, the Atlantic City rule, was adopted by the Department in February 2000 in order to recognize Atlantic City's unique position as the only city along the Atlantic Ocean to legalize casino gaming. The rule sets forth standards for the development of the five ocean piers in the city, development on and over the Atlantic City Boardwalk, intercept parking for casino development and development of rights-of-way of streets in the oceanfront block. The Department is proposing to amend the lists of street rights-of-way in consideration of the existing and planned development in the City of Atlantic City.

At N.J.A.C. 7:7E-3.49(f) through (h), the beachfront streets in Atlantic City are divided into tiers, each warranting a different level of protection. The level of protection ranges from street-ends on which development is prohibited, with limited exceptions, to street-ends that may be fully closed for development with appropriate mitigation. When first proposed in August of 1999, the Department formulated the list of street ends in Atlantic City, and placed them into categories, based on consideration of historical linkages to the oceanfront and inlet, distribution along the oceanfront within the casino district, maintenance of views, access to the beach as required by the Public Trust Doctrine, existing patterns of development in the residential portions of the City, and outstanding CAFRA approved developments.

Since the evaluation in 1999, the City has undergone major development and redevelopment along the City Boardwalk. Many of the casino hotels which existed along the oceanfront in 1999 have been expanded, two casino hotels have been razed, one new casino hotel is under construction, and at least two others are in the development stages. In several instances, while the street end itself and the area above it remain unobstructed, the construction of new hotel and casino towers, abutting protected street ends, has reduced the value of the view corridor which previously had existed on these street ends.

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Representatives for Atlantic City as well as the Casino Reinvestment and Development Authority (CRDA) have met numerous times with the Department to discuss both short and long term planning for Atlantic City. The Department, both separately and together with the City and CRDA, performed site inspections of the Atlantic City street ends and reviewed recent aerial photography to track development trends. Proposed development, endorsed by the City, will require closure of some currently protected street ends. For example, future plans call for the expansion of the hotel/casino located adjacent to Sovereign Avenue, a protected street end. Without accommodating the expansion of this and other hotels and casinos, Atlantic City will not be able to adequately compete in the hotel, tourism and gaming industries due to increased pressure from the legalization of gaming in neighboring Pennsylvania and Delaware.

In light of these competing interests, the Department undertook a comprehensive review of the City of Atlantic City to reassess which street ends should remain protected, and which could be eliminated from the list while maintaining scenic views and public access to the beach and boardwalk within a close proximity to the existing protected street ends. The assessment included analysis of street ends nearby the street ends now proposed to be removed from protected status, thus assuring that any changes to be proposed would preserve the values the rules were intended to protect.

Existing N.J.A.C. 7:7E-3.49(f) prohibits development, with the exception of signage, below-grade utilities, roads, sidewalks, public stairs and ramps providing access to the Boardwalk, in the portion of the following streets located southeast of Pacific Avenue: Sovereign Avenue, Montpelier Avenue, Iowa Avenue, Missouri Avenue, Kentucky Avenue, Tennessee Avenue, and Rhode Island Avenue. Development is similarly prohibited, subject to the same exceptions, on the portion of Atlantic Avenue, Pacific Avenue, and Grammercy Place located northeast of Rhode Island Avenue. Finally, development is prohibited in the portion of Albany Avenue located southeast of

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Pacific Avenue or an alternative alignment with a minimum 60 foot right-of-way approved by the Department.

The Department is proposing to amend N.J.A.C. 7:7E-3.49(f) to change the development status for the protected street ends from prohibited to discouraged. As defined at N.J.A.C. 7:7E-1.8, prohibited means that a proposed use of coastal resources is unacceptable and that the Department will use its legal authority to reject or deny the proposal. Discouraged means that a proposed use of coastal resources is likely to be rejected or denied because the Department has determined that it should deter such uses of coastal resources. In cases where the Department considers the proposed use to be in the public interest despite its discouraged status, the Department may permit the use provided that mitigating or compensating measures can be taken so that there is a net gain in quality and quantity of the coastal resource of concern. By proposing to change the status from “prohibited” to “discouraged,” the Department will gain some flexibility in the review of projects that require closure of a street end when such closure is deemed to be in the best interest of the public.

Based upon the comprehensive review described above, the Department is proposing to amend the street ends listed at N.J.A.C. 7:7E-3.49(f)1 to add to the list of protected street ends the portion of the following streets located southeast of Pacific Avenue: Lincoln Place, Texas Avenue, Indiana Avenue, and New York Avenue. The street ends at Montpelier Avenue, Tennessee Avenue, and Rhode Island Avenue are proposed to remain on the list of protected street ends. Sovereign Avenue, Iowa Avenue, Missouri Avenue and Kentucky Avenue are proposed for removal from the list of protected street ends. There is no net loss of protected street ends.

The Department is not amending the list of street ends at N.J.A.C. 7:7E-3.49(f)2 since development has not changed the characteristics for which these street ends were originally protected.

The Department is proposing to amend N.J.A.C. 7:7E-3.49(f)3 to reflect the use of the 2008 Atlantic City tax duplicate.

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The Department is proposing to relocate the standards for the development of signage, below-grade utilities, roads, sidewalks, public stairs and ramps, providing access to the Boardwalk in protected street ends, from N.J.A.C. 7:7E-3.49(f) to new N.J.A.C. 7:7E-3.49(f)4. In addition, the standards are reorganized, without amendment, to provide for easier reading.

Existing N.J.A.C. 7:7E-3.49(g), provides that development is acceptable in the portion of Chelsea Avenue, Texas Avenue, Florida Avenue, Martin Luther King, Jr. Boulevard, South Carolina, and New Hampshire Avenue southeast of Pacific Avenue. However, there are standards provided, at existing N.J.A.C. 7:7E-3.49(g)7 and 8 and at 3.49(i), that must be satisfied to develop the street end. Existing N.J.A.C. 7:7E-3.49(g)7 requires that a corridor 50 feet in height and 50 feet in width be maintained at street level within the street right of way between Pacific Avenue and the Boardwalk for all protected streets except Chelsea Avenue. A 60-foot corridor must be maintained for Chelsea Avenue. All corridors must remain unenclosed, entirely devoid of structures, maintain views to the Boardwalk and allow unrestricted physical access to the public. Existing N.J.A.C. 7:7E-3.49(g)8 requires mitigation. Existing 3.49(i) provides a listing of development that may occur, without mitigation, in or over the right-of-way of an existing street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue and not listed at N.J.A.C. 7:7E-3.49(f).

Like the street ends provided at N.J.A.C. 7:7E-3.49(f), the Department has reevaluated the street ends at N.J.A.C. 7:7E-3.49(g). Due to existing and proposed development, the Department is proposing to amend the list of protected street ends at N.J.A.C. 7:7E-3.49(g). The existing list of street ends includes streets that are adjacent to existing casino and hotel development as well as streets adjacent to proposed development. Some of the street ends are currently used as loading areas and have heavy truck traffic. For example, Florida Avenue is adjacent to Boardwalk Hall and while it stills serves as an access point to the boardwalk, due to the high volume of trucks arriving to service Boardwalk Hall, this access can be obstructed and visual access is limited, at

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best. After taking into account the existing and proposed development, the Department is proposing to delete all existing street ends at N.J.A.C. 7:7E-3.49(g) and to replace them with the portions of Iowa Avenue, Christopher Columbus Boulevard (formerly Missouri Avenue), Park Place, Pennsylvania Avenue, and New Jersey Avenue located southeast of Pacific Avenue. Some of the newly listed street ends already have pedestrian bridges overhead. However, the bridges only minimally impact the viewshed. These street ends are readily open for pedestrian traffic to preserve the public access to the Boardwalk. The proposed street ends provide equal, if not improved, visual as well as physical public access to the Boardwalk while allowing for existing and proposed development.

N.J.A.C. 7:7E-3.49(g)7 is recodified as proposed N.J.A.C. 7:7E-3.49(g)6. In addition, the existing language is proposed for amendment to clarify the requirement to provide a corridor equal to the right-of-way width and 50 feet in height, and to delete the reference to Chelsea Avenue's 60-foot corridor since Chelsea Avenue is proposed for deletion from the list of street ends. In addition, proposed N.J.A.C. 7:7E-3.49(g)6 includes a proposed amendment to reflect the use of the 2008 Atlantic City tax duplicate. The Department is adding language which excludes existing pedestrian bridges from the corridor width and height requirements to clarify that it is not necessary to reconfigure existing bridges if they become part of a future project. N.J.A.C. 7:7E-3.49(g)8 is being recodified as N.J.A.C. 7:7E-3.49(g)7 with no change in text.

N.J.A.C. 7:7E-8.14 Traffic

N.J.A.C. 7:7E-8.14, traffic, contains the requirements for the movement of vehicles and pedestrians within the coastal zone. N.J.A.C. 7:7E-8.14(e) addresses the provision of parking to accompany coastal residential development. Adequate onsite or off-site parking for residential development ensures that on-street parking remains available for use by beachgoers, consistent with public trust rights, the Shore Protection

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Master Plan, and with the coastal goal regarding meaningful public access to and use of tidal waterways and their shores (see N.J.A.C. 7:7E-1.1(c)3).

The Department is proposing amendments to revise and reorganize N.J.A.C. 7:7E-8.14(e). At N.J.A.C. 7:7E-8.14(e)1ii, the Department is updating the reference to Dover Township, Ocean County, to reflect that the name of Dover Township has been changed to Toms River Township. Proposed N.J.A.C. 7:7E-8.14(e)2 provides that, with the exception of certain types of development specified in proposed N.J.A.C. 7:7E-8.14(e)2i through 2iii, the requirement to provide two onsite or off-site parking spaces per dwelling unit, currently part of the lead in language of N.J.A.C. 7:7E-8.14(e), applies only to dwelling units within one-half mile of an oceanfront beach or dune. Landward of this area, development will continue to be required to provide parking sufficient to serve the development's anticipated needs. This proposed amendment will protect on-street parking in the area within a reasonable walking distance from the oceanfront for use by beachgoers, while allowing flexibility in areas of some municipalities that border the ocean that are not as likely to be utilized for public access purposes. Dwelling units are defined in CAFRA and at N.J.A.C. 7:7E-1.8 to include houses, townhouses, apartments, cooperatives, condominiums, cabanas, and hotel or motel rooms.

The Department is proposing to recodify existing N.J.A.C. 7:7E-8.14(e)2 to N.J.A.C. 7:7E-8.14(e)2i with no change in text. N.J.A.C. 7:7E-8.14(e)3, which excludes nursing homes and assisted living facilities from the parking requirements currently contained in (e), is proposed to be amended, because of the reorganization of the rule, to reference the subsection rather than (e). The Department is proposing to recodify N.J.A.C. 7:7E-8.14(e)4 to N.J.A.C. 7:7E-8.14(e)2ii. Only changes reflecting the correct codification of the subparts of this provision as a result of the reorganization are proposed.

The Department is proposing in N.J.A.C. 7:7E-8.14(e)2iii to base the parking requirements on the size of the dwelling unit. Specifically, the Department is proposing that one parking space be provided for each dwelling unit that is 650 square feet or

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smaller. The Department believes that this change will ensure that adequate parking exists for residents of these types of units in municipalities adjacent to the ocean without impacting on-street parking for visitors and tourists. Setting required parking at more appropriate levels for these types of units will additionally reduce the amount of impervious surface required to meet parking requirements in oceanfront municipalities.

Social Impact

The proposed exclusion of Bader Field from the list of Bay islands at N.J.A.C. 7:7E-3.21(b) will have a positive social impact because it will facilitate redevelopment of the site. Bader Field is serviced by public utilities including sewer, electric, gas and water, has been developed with moderate to high intensity commercial and/or public development, has direct access to major roads, and access to existing utility infrastructure to support development. Consequently, it is a very viable and appropriate site for redevelopment. While the exclusion of Bader Field from the Bay Islands rule will facilitate redevelopment, any future development at Bader Field will continue to be required to comply with all other applicable Coastal Zone Management rules. Therefore, the proposed amendment will have a positive social impact.

The proposed amendment to allow the option for developers of Bader Field to satisfy the filled water's edge requirements with a walkway instead of requiring development of a water-dependent use will have a neutral social impact. The filled water's edge rules overall are intended to ensure that the public maintains access to the waterfront. The rules provide different standards for satisfying the filled water's edge rules depending upon whether a site is located in the northern waterfront versus in a seaside resort. Bader Field is zoned as a "Resort Commercial District" which has the potential for development with a variety of commercial, retail, residential and entertainment uses as opposed to the zoning of most seaside communities which allows residential with very limited commercial use. This zoning makes Bader Field unique in

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seaside communities since it will likely more closely resemble the northern waterfront areas. Because in the northern waterfront, the filled water's edge requirements can be satisfied by the incorporation of a public access walkway, and Bader Field is likely to more closely to be developed more consistently with the northern waterfront than with other seaside communities, the Department has determined that the proposed amendment to allow a walkway as an alternative to a water dependent use, will have a neutral social impact.

Similarly, the proposed amendments that would change the list of protected street ends in the City of Atlantic City, will have a neutral social impact. The elimination of street ends which provide both physical and visual access to the waterfront will have a negative environmental impact, since the public will no longer be able to access the beach by way of these roadways. However, the requirement that an equal number of replacement, immediately adjacent street ends, or those within 0.25 miles remain open will have a positive social impact because the proposed rules will continue to ensure that the public has both visual and physical access to the beach in Atlantic City. Therefore, the proposed amendments will have a neutral social impact.

The rules at N.J.A.C. 7:7E-8.14 include provisions for traffic in the coastal zone and also provisions to ensure that residential developments provide adequate parking. N.J.A.C. 7:7E-8.14(e) addresses the provision of parking for coastal development located in municipalities which border the Atlantic Ocean. The proposed amendments that would limit the two parking spaces per dwelling unit requirement to dwelling units within one-half mile of an oceanfront beach or dune will ensure residential development does not displace on-street parking used by beachgoers while not imposing these requirements on developments farther from the oceanfront. Requiring only one parking space for each dwelling unit 650 square feet or smaller will provide sufficient parking to meet the needs of the residential development and will not likely affect the availability of on-street parking for use by the public visiting the shore area.

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Economic Impact

The proposed exclusion of Bader Field from the list of Bay islands, together with the proposed amendment to allow developers of Bader Field the option to satisfy the filled water's edge requirements with a walkway instead of requiring development of a water-dependent use, will have a positive economic impact because it will facilitate redevelopment of the site. The current city zoning for Bader Field permits casino, hotel, retail, entertainment, residential and/or commercial uses. Consequently, facilitating redevelopment will provide construction jobs in the short term, and may ultimately provide service jobs if the site is developed with non-residential facilities, thereby providing an ongoing source of revenue for the City of Atlantic City. Redevelopment with residential development will provide new residents to the city who will at a minimum contribute to the city's revenues with payment of property taxes. Each of these potential redevelopment possibilities will result in a positive economic impact.

Similarly, the proposed amendments to change the list of protected street ends in the City of Atlantic City, will have a positive economic impact because the proposal allows the closing of street ends necessary to allow for the expansion of existing hotels and casinos. Facilitating expansion will help to ensure the success of these businesses and the continued flow of revenue within Atlantic City. The proposal to require that street ends to be closed are replaced with other open street ends, will also have a positive economic impact. Because the proposal continues to ensure that the public has access to the beach in Atlantic City, the proposal helps promote tourism which provides another source of revenue for Atlantic City.

The proposed amendments to limit the two parking space per dwelling unit requirement to the area within one-half mile of a beach or dune and to allow one parking space per dwelling unit of 650 square feet or less, will have a positive economic impact for developers who will be required to build accommodation for fewer parking spaces thereby reserving more land. Further, since much of the economic viability of shore communities depends upon tourism (for greater detail on the value of tourism to the shore

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see 39 N.J.R. 5149), ensuring that adequate parking exists for residents in proximity to the ocean results in retaining on-street parking for visitors and tourists. Therefore, the proposed rule amendments will have a positive economic benefit to the tourism industry and therefore to the State's overall economy.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995 c. 65) require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Federal Coastal Zone Management Act (P.L. 92-583) was signed into law on October 27, 1972. The Act does not set specific regulatory standards for development in the coastal zone; rather it provides broad guidelines for states developing coastal management programs. These guidelines are found at 15 C.F.R. Part 923. The guidelines do not specifically address the review standards that should be applied to new coastal development in order to preserve and protect coastal resources and to concentrate the pattern of coastal development. The guidelines simply provide a planning and management process, without establishing development standards for development in the coastal area. Therefore, the Department has concluded that the proposed amendments do not exceed any Federal standards or requirements of the Federal Coastal Zone Management Act.

Environmental Impact

The redevelopment of Bader Field, which will be facilitated by the exclusion of Bader Field from the list of bay islands at N.J.A.C. 7:7E-3.21, and by the proposed amendment at N.J.A.C. 7:7E-3.23 to allow the developers of Bader Field the option to satisfy the filled water's edge requirements with a walkway instead of requiring

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development of a water-dependent use, will have a neutral environmental impact. As previously stated, certain bay islands are excluded from the bay island rules based on a review of their physical conditions, including environmental sensitivity, accessibility, and level of existing development and infrastructure. Because of the degree of existing development on Bader Field, the redevelopment of the site will not pose a significant threat to environmental resources. Further, while the addition of Bader Field to the list of excluded bay islands will affect the impervious coverage limitations applicable to this area, any future development at Bader Field will continue to be required to comply with all other applicable Coastal Zone Management rules. The Department does not anticipate any negative environmental impact from changes in the impervious coverage limitations applicable to this area because Bader Field already contains significant impervious cover.

The Department believes that proposing the option to allow a walkway for public access will have minimal environmental impact and no greater environmental impact than requiring another water dependent use. By definition at N.J.A.C. 7:7E-1.8, examples of water dependent development include commercial fishing, public waterfront recreation and marinas. So long as a walkway or any water dependent use does not encroach on environmentally sensitive areas, either should have minimal environmental impact.

The proposed amendments to the Atlantic City rule, which substitute existing protected street ends with an alternative list of street ends, will have no environmental impact since all streets are already existing and contained within the city of Atlantic City.

The proposed amendments to the parking requirements do not affect the type, quantity of, or ability to construct, residential development in the coastal zone. Residential development projects, of which parking is a part, must satisfy all applicable environmental standards of the Coastal Zone Management rules. The proposed amendment to limit the two parking space requirement per dwelling unit to the area within one-half mile of a beach or dune may result in the construction of fewer parking facilities more than one-half mile inland, and therefore less impervious surface. Similarly, requiring fewer parking spaces for small dwelling units, may result in smaller parking

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facilities and less impervious surface. Therefore, the proposed amendments to the parking rules at N.J.A.C. 7:7E-8.14 are not expected to have either a positive or negative environmental impact.

Jobs Impact

As previously stated in the Economic Impact, the proposed exclusion of Bader Field from the list of Bay islands, and the proposed amendment to provide the option for those developing Bader Field to satisfy the filled water's edge requirements with a walkway instead of requiring development of a water-dependent use, will have a positive impact on jobs. The proposed amendments to the rules will facilitate the redevelopment of Bader Field. Redevelopment will result in construction jobs to construct whatever development is ultimately approved on Bader Field. Further, upon completion, Bader Field may contain a casino, hotel, retail, entertainment, residential and/or commercial uses. All of these uses will require the hiring of employees, thereby resulting in a positive impact on jobs.

The proposed amendments to the Atlantic City rule, which substitute existing protected street ends with an alternative list of street ends, will have no direct impact on jobs since all streets are already existing and contained within the city of Atlantic City. However, because the proposed amendments will accommodate possible expansion of existing casinos and hotels, such expansion could result in construction jobs and the subsequent need to hire more employees for the expanded facilities and, therefore, could have an indirect, positive impact on jobs.

The proposed amendments to the parking requirements do not affect the type, quantity of, or ability to construct, residential development in the coastal zone. Therefore, the proposed amendments are not expected to have either a positive or negative impact on jobs.

Agriculture Industry Impact

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The proposed exclusion of Bader Field from the list of Bay islands and the proposed amendment at N.J.A.C. 7:7E-3.23 to allow Bader Field to satisfy the filled water's edge requirements with a walkway instead of requiring development of a water-dependent use, will have no impact on agriculture industry because there is no agricultural land on Bader Field.

The proposed amendments to the Atlantic City rule which substitute existing protected street ends with an alternative list of street ends, and provide standards for closing street ends will have no impact on agriculture since all streets are already existing and contained within the city of Atlantic City.

The proposed amendments to the number of parking spaces required for residential developments will have no impact on agriculture industry because they do not impose additional development requirements but rather change the number of parking spaces required to accompany proposed residential development.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department is required to determine whether its rules will affect "small businesses" as defined by the Regulatory Flexibility Act. As previously described, the proposed exclusion of Bader Field from the list of Bay islands, and the proposed amendment to allow developers of Bader Field to satisfy the filled water's edge requirements with a walkway instead of requiring development of a water-dependent use will facilitate the redevelopment of Bader Field. Bernie Robbins Stadium and the Flyers SkateZone are currently operating on the site. Flyers SkateZone is independently owned by Comcast Spectracor/the Philadelphia Flyers, which entity is not a small business as it employs more than 100 people full-time. Bernie Robbins Stadium is owned by the City of Atlantic City; however, the stadium is leased by the Surf, a minor league baseball

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team, which has less than 100 full-time employees and, therefore, meets the definition of a small business. Even though one of these affected entities is a small business, the proposed amendments will not impose any new requirements on the facilities that will require them to hire additional consultants or engineers. There will be no additional reporting, recordkeeping or other compliance requirements as a result of the proposed amendments.

The proposed amendments to the Atlantic City rule which substitute existing protected street ends with an alternative list of street ends, will have no impact on small businesses. The amended list of street ends will accommodate possible expansion of existing casinos and hotels. None of the potentially affected businesses would be classified as small businesses. Street end encroachment is done by casinos/hotels and/or the City of Atlantic City. Businesses with less than 100 full-time employees would not be undertaking such a large project. The closure of the street ends will not result in small businesses needing to secure consultants or engineers or enter into additional recordkeeping or reporting. The amended list of street ends will accommodate possible expansion of existing casinos and hotels. None of the potentially affected businesses would be classified as small businesses.

The Department has determined that some of the builders and property owners that may be affected by the proposed amendments relating to the number of parking spaces for residential development may be small businesses. However, the proposed amendments will not impose additional reporting or recordkeeping requirements on small businesses. The reporting, recordkeeping, and other compliance requirements include the requirement to apply for and obtain a permit for regulated activities; and to provide information to the Department and the public in the form of applications, reports, and public notices. Therefore, a small business that proposes new residential development will have the same application requirements, including the need to satisfy the proposed amended parking requirements, as any other business because the rules regulate based on environmental impacts. Because the purpose of the amended parking provision for

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residential development is to continue to ensure the provision of adequate parking for residents so that residents will not fill on-street parking spaces available for use by beachgoers, no lesser requirements for small businesses are provided. The proposed amendments will not impose additional reporting or recordkeeping requirements on small businesses. The Departments anticipates that small businesses affected by the proposed amendments will not need additional professional services or need to incur additional capital costs in order to comply with the rules in this chapter. In fact, the reduction in the number of parking spaces required for a development may result in a decrease in expenditures since less materials and land will be required to comply with the proposed amendments.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact Statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments' impact on smart growth and the implementation of the State Plan.

The State Planning Act contains three key provisions which guide the State Plan. They are: encouraging development, redevelopment and economic growth in locations that are well situated with respect to present or anticipated public services or facilities and to discourage development where it may impair or destroy natural resources or environmental qualities; reducing sprawl; and promoting development and redevelopment in a manner consistent with sound planning and where infrastructure can be provided at private expense or with reasonable expenditures of public funds (see N.J.S.A. 52:18A-196, et seq.). In addition, the State Plan policy for coastal resources mandates the promotion of recreational opportunities and public access, and

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encouragement of tourism along the oceanfront, bayfront and rivers of the coastal area. Consequently, the proposed amendment to add Bader Field to the list of excluded bay islands, and the proposed amendment to allow developers of Bader Field the option to satisfy the filled water's edge requirements with a walkway instead of requiring development of a water-dependent use, is consistent with the goals of the State Plan because it will facilitate redevelopment of a site that has access to existing utility infrastructure to support development, with direct access to major roads, and that has been previously developed with commercial and/or public development. In addition, the option to build a walkway instead of a water dependent use will continue to ensure public access to the water.

Further, the proposed amendments to the Atlantic City rule which substitute existing protected street ends with an alternative list of street ends, are also consistent with the State Plan because the amended list of street ends will accommodate possible expansion of existing casinos and hotels, thereby reducing sprawl and promoting development and redevelopment where infrastructure can be provided at private expense or with reasonable expenditures of public funds.

As previously noted, the State Plan policy for coastal resources mandates the promotion of recreational opportunities and public access, and encouragement of tourism along the oceanfront, bayfront and rivers of the coastal area. Since the parking provision for residential development is intended to ensure adequate residential parking so that residents will not fill offsite parking spaces available for use by beachgoers, the proposed amendments to the parking provisions will support and comport with the goals of smart growth and implementation of the State Plan.

Housing Affordability Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments for purposes of

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determining their impact, if any, on the affordability of housing. The Department has determined that the proposed rules will impose an insignificant impact because there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing. The proposed exclusion of Bader Field from the list of bay islands and the proposed amendment to allow Bader Field to satisfy the filled water's edge requirements with a walkway instead of requiring development of a water-dependent use, will facilitate redevelopment. The current city zoning for Bader Field permits casino, hotel, retail, entertainment, residential and/or commercial uses. Consequently, although the proposed amendment will facilitate redevelopment, the proposed amendment will not control the type of development to be constructed on the site and therefore will have no affect on the average costs of housing.

The proposed amendments to the Atlantic City rule which substitute existing protected street ends with an alternative list of street ends, will accommodate possible expansion of existing casinos and hotels, and will not affect residential development. Therefore, the proposed rule amendments will have no affect on the average costs of housing.

The proposed rule amendments relating to parking do not impose additional development requirements but rather change the number of parking spaces required to accompany residential development depending upon the location and size of the dwelling units. The proposed parking requirement only applies to particular oceanfront areas within the coastal zone. Further, when compared to the existing rules, some developments may require fewer parking spaces if they are building small residential units (up to and including 650 square feet). Therefore, the Department believes there is an extreme unlikelihood that the proposed rules would evoke a change in the average costs associated with housing.

Smart Growth Development Impact

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In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments for purposes of determining their impact, if any, on smart growth development.

Atlantic City is in Planning area 1 under the State Development and Redevelopment Plan. Consequently, the proposed amendments to the CZM rules that will exclude Bader field from the list of bay islands, and allow developers of Bader Field the option to satisfy the filled water's edge requirements with a walkway instead of requiring development of a water-dependent use, thereby facilitating redevelopment, may have a positive impact on housing production. The current city zoning for Bader Field permits casino, hotel, retail, entertainment, residential and/or commercial uses. If the final use includes residential development, the proposed rule will have a positive impact on housing production. If non-residential development is the final use for the site, there will be no affect of the Department's rule amendment relating to Bader Field on housing production within Planning area 1.

The proposed amendments to the Atlantic City rule which substitute existing protected street ends with an alternative list of street ends will accommodate possible expansion of existing casinos and hotels, and therefore will not affect residential development or housing production within Atlantic City.

The proposed amendments to limit the requirement to provide two parking spaces per dwelling unit to residential development located within one-half mile of an oceanfront beach or dune, and to allow one parking space per residential unit of 650 square feet or less replace existing parking requirements. Further, the parking requirements are only applied to residential development projects that satisfy all of the applicable standards of the Coastal Zone Management rules. Therefore, the Department believes there is an extreme unlikelihood that the proposed parking rule amendments would evoke a change in housing production within Planning areas 1 or 2 or within Designated Centers.

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

7:7E-3.21 Bay islands

(a) Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier island. Such islands may be connected to the mainland or barrier island by elevated or fill supported roads (see Appendix, Figure 3, incorporated herein by reference). Existing lagoon edges (N.J.A.C. 7:7E-3.24) are not bay islands.

1. (No change.)

2. For the purposes of this chapter, the areas listed below are not considered bay islands. The impervious cover limits for these areas are determined under the Special Area rules at N.J.A.C. 7:7E-3 where applicable, and/or under N.J.A.C. 7:7E-5B.

OCEAN COUNTY

Bonnett Island, Stafford Township

Chadwick Island, Dover Township

Channel Island, Mantoloking Borough

Osborne Island, Little Egg Harbor Township

Pelican Island, Dover/Berkeley Townships

West Point Island, Lavallette Borough

ATLANTIC COUNTY

Bader Field, Atlantic City

Chelsea Heights, Atlantic City

Venice Heights, Atlantic City

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Ventnor Heights, Ventnor City

CAPE MAY COUNTY

Princeton Harbor, Avalon Borough

Shawcrest/Hildreth Island, Lower and Middle Townships. The areas mapped as Shawcrest/Hildreth Island are identified in the Department's Geographic Information System (GIS) coverage, titled "Shawcrest/Hildreth Island." This coverage is available as a download at the CAFRA layers webpage: www.state.nj.us/dep/gis/cafralayers.htm

West Wildwood, Wildwood City

West 17th Street, Ocean City

(b) – (d) No change.

7:7E-3.23 Filled water's edge

(a)-(f) (No change.)

(g) In the area known as Bader Field, a filled water's edge area located in the City of Atlantic City and described on the 2008 Atlantic City tax duplicate as Block 794, Lot 1, the water dependent use shall be provided in accordance with (c) above or an upland public walkway along the water's edge, no less than 20 feet wide, with a 40 foot wide right-of-way shall be provided.

(g)-(j) Recodified as (h) through (k). (No change in text.)

7:7E-3.49 Atlantic City

(a) Atlantic City is those lands within the municipal boundary of the City of Atlantic City.

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(b) – (e) (No change.)

(f) Development is [prohibited] discouraged in the street rights-of-way listed in (f)1 and 2 below as shown on the [1999] 2008 Atlantic City tax duplicate, and in the street right-of-way listed in (f)3 below, [with the exception of signage extending no more than four feet into the street right-of-way and located a minimum of 14 feet six inches above the surface of the sidewalk and of below-grade utilities, roads, sidewalks, public stairs and ramps providing access to the Boardwalk and mitigation pursuant to (j) below.] except in accordance with the provisions in (f)4 below.

1. That portion of the following streets located southeast of Pacific Avenue:

i. [Sovereign Avenue] Lincoln Place (50 foot right-of-way);

ii. Montpelier Avenue (60 foot right-of-way);

[iii. Iowa Avenue (72 foot right-of-way);

iv. Missouri Avenue (50 foot right-of-way);

v. Kentucky Avenue (50 foot right-of-way);

vi.] iii. Texas Avenue (50 foot right-of-way);

iv. Indiana Avenue (60 foot right-of-way);

v. New York Avenue (50 foot right-of-way);

vi. Tennessee Avenue (60 foot right-of-way); and

vii. Rhode Island Avenue (50 foot right-of-way);

2. (No change.)

3. That portion of Albany Avenue (60 foot right-of-way) located southeast of Pacific Avenue as shown on the [1999] 2008 Atlantic City tax duplicate or an alternative

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alignment with a minimum 60 foot right-of-way approved by the Department which provides a comparable view corridor to the ocean and horizon.

4. The following development is conditionally acceptable provided that mitigation is performed pursuant to (j) below:

i. Signage, extending no more than four feet into the street right-of-way and located a minimum of 14 feet six inches above the surface of the sidewalk; and

ii. Below-grade utilities, roads, sidewalks, public stairs and ramps that provide access to the Boardwalk.

(g) Development is acceptable southeast of Pacific Avenue in or over the right-of-way of a street listed in (g)1 through [6] 5 below as shown on the [1999] 2008 Atlantic City tax duplicate provided that it either meets the standards of (g) [7] 6 and [8] 7 below or of (i) below.

1. [Chelsea Avenue (60 foot right-of-way)] Iowa Avenue (72 foot right-of-way);

2. [Texas Avenue] Christopher Columbus Boulevard (50 foot right-of-way);

3. [Florida Avenue] Park Place (50 foot right-of-way);

4. [Martin Luther King, Jr. Boulevard (50 foot right-of-way)] Pennsylvania Avenue (72 foot right-of-way); and

5. [South Carolina] New Jersey Avenue (50 foot right-of-way)[;] .

6. [New Hampshire Avenue(50 foot right-of-way);

7.] With the exception of any existing pedestrian bridges on the 2008 Atlantic City tax duplicate, a corridor equal to the right-of-way width and 50 feet in height [and 50 feet in width, except 60 feet in width for Chelsea Avenue,] shall be maintained at street level within the street right of way between Pacific Avenue and the Boardwalk. The entire corridor shall be unenclosed, entirely devoid of structures, maintain views to the Boardwalk and allow unrestricted physical access to the public.

[8] 7. (No change in text.)

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(h)-(l) (No change.)

N.J.A.C. 7:7E-8.14 Traffic

(a)-(d) (No change.)

(e) Coastal development located in municipalities which border the Atlantic Ocean, except as excluded under (e)1[2,] and 3 [or 4] below, shall [provide sufficient on-site and/or off-site parking for its own use at a ratio of two spaces per residential unit] satisfy the requirements for parking specified in this subsection. Coastal development subject to this subsection shall provide sufficient on-site and/or off-site parking for its own use. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7E-7.5(d), the parking facility rule, where applicable.

1. The non-oceanfront portions of the following municipalities which border the Atlantic Ocean are excluded from the parking requirement at (e) above:

i. (No change.)

ii. Brick, [Dover] Toms River and Berkeley Townships, Ocean County: Those portions of these municipalities which are not located between Barnegat Bay and the Atlantic Ocean;

iii. –iv. (No change.)

2. Except as provided in i.through iii. below, residential development located within one-half mile of an oceanfront beach or dune shall provide on-site and/or off-site parking at a ratio of two parking spaces per unit for each dwelling unit.

i. The Department shall reduce the parking requirement for developments restricted to senior citizen housing that is, restricted to persons at least 62 years of age or

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those persons meeting the definition of "senior citizen tenant" pursuant to the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61, upon documentation that the parking needs of the development are less than two spaces per unit;

[3. Nursing homes and assisted living facilities are excluded from the parking requirement at (e) above; or]

[4.] ii. The Department shall reduce the parking requirement for development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, provided the proposed development complies with [(e)4i through v](e)2ii(1)-(5) below. The reduced parking requirement does not apply to any new development located outside of the existing footprint of development.

[i.] (1) The development preserves the historic structure;

[ii.] (2) The development will not detract from, damage, or destroy the value of the historic structure;

[iii.] (3) The development is located within the footprint of development of the historic structure, as defined at N.J.A.C. 7:7E-1.8;

[iv.] (4) The development provides on site and/or off site parking for any new units created through the addition of new floors within the footprint of development as defined at N.J.A.C. 7:7E-1.8 at a ratio of one space per new residential unit; and

[v.] (5) All existing parking spaces associated with the historic structure are retained.

iii. On-site and/or off-site parking shall be provided at a ratio of one parking space per unit for each dwelling unit that is 650 square feet or smaller; and

3. Nursing homes and assisted living facilities are excluded from the parking requirements of this subsection.

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(f) (No change.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purpose and expected consequences of these proposed amendments. I hereby authorize this proposal.

Date

Mark N. Mauriello
Acting Commissioner