



2 of 4 DOCUMENTS

NEW JERSEY REGISTER

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VOLUME 42, ISSUE 11

ISSUE DATE: JUNE 7, 2010

RULE ADOPTIONS

**ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
DIVISION OF LAND USE REGULATION**

42 N.J.R. 1039(a)

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

Coastal Zone Management

Special Areas - Bay Islands, Filled Water's Edge, and Atlantic City

Resource Rules - Traffic

Proposed: January 20, 2009 at 41 N.J.R. 356(a).

Adopted: January 13, 2010 by Mark N. Mauriello, Acting Commissioner, Department of Environmental Protection.

Filed: January 14, 2010 as R.2010 d.045, **without change**.

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

DEP Docket Number: 23-08-12/699.

Effective Date: June 7, 2010.

Expiration Date: July 7, 2011.

The Department of Environmental Protection (Department) is adopting amendments to the Coastal Zone Management rules, N.J.A.C. 7:7E, to add Bader Field in the City of Atlantic City, Atlantic County, to the list of areas which, for the purposes of this chapter, are not considered bay islands; to allow future development of Bader Field to incorporate a public walkway in lieu of setting aside 100-foot wide area along the waterfront for future water-dependent

use; to modify the list of protected street ends in the City of Atlantic City by adding additional street ends and opening other streets based on the in-flux of recent commercial and casino development; and to change the parking requirements for residential development in the coastal zone.

Summary of Hearing Officer's Recommendation and Agency Response

The Department held a public hearing on the proposal on February 19, 2009 at 1:00 P.M., in the City Council Chambers of the City of Atlantic City, in Atlantic City. Patricia Cluelow was the hearing officer. Eleven members of the public attended the hearing with two persons giving testimony. The hearing officer recommended that the proposal be adopted without change from proposal. The Department accepts the hearing officer's recommendation.

The hearing record is available for inspection in accordance with applicable law by contacting:
Office of Legal Affairs
Attn: DEP Docket No. 23-08-12/699
Department of Environmental Protection
401 East State Street, Floor 4
P.O. Box 402
Trenton, New Jersey 08625-0402.

Summary of Public Comments and Agency Responses:

The proposal was published on January 20, 2009. The Department accepted comments on the proposal through March 21, 2009. Seven commenters provided timely written and/or oral comments. The following persons submitted comments:

1. Crane, William D.; City of Atlantic City
2. DeLucry, Richard F.; Hill Wallack, LLP
3. Dix, Junetta N.; Junetta N. Dix Consulting, Inc.
4. Lomax, Joseph L.; The Lomax Consulting Group
5. McCabe, Kevin P.; New Jersey Regional Council of Carpenters
6. Nehmad, Stephen R.; Nehmad, Perillo and Davis
7. Noce, Anthony M.; Pitcairn Properties

The timely submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

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

1. COMMENT: This rule amendment is supported as Bader Field is physically part and parcel of an island that already contains two exempt areas - Chelsea Heights and Ventnor Heights. This island is significantly developed and the addition of Bader Field, a site which includes a large land area which is almost totally covered with impervious surface, would be consistent with the rules and eminently rational given the massive infrastructure already existing in this Bader Field, Chelsea Heights, and Ventnor Heights area. (6)

RESPONSE: The Department acknowledges this comment in support of this rule.

2. COMMENT: The Department is not including a "new" bay island to the list of exempted islands but, rather, is simply extending the boundaries of an existing exempted area. The Bader Field area is part of a bay island that currently contains two exempted areas and is surrounded by existing intensively dense development. The existing development and environmental conditions of the entire island support the inclusion of the Bader Field area on the list of exempted areas. (3)

RESPONSE: The Department agrees with this assessment. When the Department originally adopted the bay islands rule in August of 1990, Bader Field was a fully operational airfield. In comparison, the areas in Atlantic City which were excluded from the provisions of the bay islands rule were highly developed with residential, recreational, and commercial uses along with infrastructure to support the development. It was not foreseen that the airfield would cease operation and that Bader Field would be rezoned for development. Therefore, Bader Field was not originally excluded from the rule. When the City of Atlantic City decided to solicit proposals for the development of the Bader Field parcel, it approached the Department to evaluate the site with regard to this rule. Given that Bader Field shares the characteristics of other islands excluded from this rule, the Department determined it was appropriate to add this area to the excluded islands.

3. COMMENT: If a "new" island were to be considered for exemption in the future, the commenter is confident that the Department will consider the environmental conditions, surrounding land uses and existing area of development on the entire island. Development of even a portion of an existing bay island that contains minimal upland areas and significant tidally influenced wetland areas or other environmentally sensitive areas could likely result in significant threats to unique and special environmental resources. (3)

RESPONSE: The bay islands excluded from the rule have many characteristics in common, including existing high intensity commercial and/or residential development, direct access to major roads and access to existing utility infrastructure to support development. Each site currently excluded from the rule or under future consideration would have to share these characteristics with the areas already excluded. Exclusion of a specific area from the requirements of the bay islands rule does not exclude that area from Departmental jurisdiction or regulations. Therefore, while it is possible that environmentally sensitive areas exist within the boundaries of an area excluded from the bay islands rule, development of the areas would still need to comply with all applicable statutes and regulations which would serve as protection for the environmentally sensitive features.

4. COMMENT: The exemption of Bader Field should not be deemed to in any way be precedential with respect to any future exemption requests from the bay islands rule that may be presented to the Department. Any such future exemption request must focus upon the existing characteristics of the site for which exemption is requested and whether potential development of the excluded island would pose a significant threat to environmental resources, and whether storm evacuation procedures would be adversely impacted. Any future exemption request should be subject to rigorous review of existing conditions when viewed in light of the standards for exemption established at N.J.A.C. 7:7E-3.21 including, without limitation, environmental sensitivity, accessibility and level of existing development and infrastructure. (6)

RESPONSE: Since the adoption of the bay islands rule in 1990, the Department has amended the rule to include two additional areas to the list of excluded bay islands: Shawcrest/Hildreth Island located in Lower [page=1040] and Middle Townships, Cape May County and Bader Field in the City of Atlantic City, Atlantic County. In both instances the sites were individually evaluated for existing high intensity commercial and/or residential development, direct access to major roads and access to existing utility infrastructure to support development. The Department also investigated whether development of these areas would pose a significant threat to environmental resources or adversely affect storm evacuation from the oceanfront barrier islands. In both cases, the Department determined that the areas met the criteria for exclusion from the rule.

Should the Department entertain the exclusion of other islands in the future, the area would be evaluated using the same criteria and a determination to exclude the area would be based on the individual merits of the area under

consideration.

5. COMMENT: Future development at Bader Field would not pose a significant threat to environmental resources, nor would it adversely affect storm evacuation from the oceanfront barrier islands. The existing site conditions at Bader Field meet the criteria for exemption pursuant to the analysis conducted by the Department and published at 41 N.J.R. 356. (6)

RESPONSE: The Department acknowledges this comment in support of this amendment.

N.J.A.C. 7:7E-3.49 Atlantic City

6. COMMENT: Albany Avenue should be removed from its current tier. Such a change would not compromise the regulatory interest in preserving view corridors. The pending rule proposal will now designate Lincoln Place, which is just one block south of Albany Avenue, as a protected "tier 1" street end subject to N.J.A.C. 7:7E-3.49(f)1. That ensures that there will be a protected view corridor in the area of the Gateway site. (1, 2)

RESPONSE: When the Atlantic City rule was proposed in August of 1999, the Department formulated the list of street ends in Atlantic City, and placed them into categories, based on a number of considerations. The Department sought to not only maintain view corridors, but to maintain historic linkages to the oceanfront and access to the beach as required by the Public Trust Doctrine. This list of protected street ends was not amended until the current rule adoption. Because of its location, Albany Avenue provides a unique vantage point for people entering the City of Atlantic City that cannot be duplicated in another location. Albany Avenue is located adjacent to a major approach accessway to the City of Atlantic City known as the "Gateway to Atlantic City." The alignment of Albany Avenue provides the public arriving in the City with its first view of the boardwalk and beach. In addition, Albany Avenue provides direct access to the boardwalk and the public beach, along with parking opportunities. As such, Albany Avenue merits special consideration.

The Department determined that Lincoln Place provides an unobstructed view and access to the boardwalk which makes this street end important for protection. However, its location is not as historically prominent as that of Albany Avenue. In addition, Lincoln Place was designated as a protected street end, in part, because Sovereign Avenue is being removed from the list of protected street ends so that there would be no net loss of protected street ends. Substituting Lincoln Place for Albany Avenue would not only lead to a loss in the number of protected street ends, but would also result in the loss of a historically important viewshed, diminished access to the beach and boardwalk, and loss of public parking for public access.

7. COMMENT: If development within the Albany Avenue right-of-way were to be governed by N.J.A.C. 7:7E-3.49(h), that development would generate a mitigation payment that must be earmarked for "acquisition and/or improvement of lands for public access and public parks along the oceanfront and inlet" pursuant to N.J.A.C. 7:7E-3.49(j)3. This requested amendment would be accomplished through the deletion of N.J.A.C. 7:7E-3.49(f)3, accompanied by the deletion of the phrase "and in the street right-of-way listed in (f)3 below" from the introductory paragraph of N.J.A.C. 7:7E-3.49(f). (1, 2)

RESPONSE: Mitigation is intended to compensate for a reduction in those physical and biological values described under applicable Special Area rules, while allowing development consistent with acceptability criteria. The Department does not amend rules or grant permits and/or approvals based on the amount of monetary mitigation that can be garnered as a result. Mitigation is allowed when the Department determines that the proposed impacts to resources meet the applicable regulatory criteria.

The Atlantic City rule discourages development of the protected street ends. However, if the Department determines that disturbance of a protected street end is in the public interest, it may permit that use provided that mitigating or compensatory measures are taken. Because of its location, Albany Avenue provides a unique vantage

point for people entering the City of Atlantic City that cannot be duplicated in another location. The Atlantic City rule provides that Albany Avenue may be realigned, with Departmental approval, provided that a 60-foot wide right-of-way is maintained with a comparable view of the ocean and horizon. The Department does not believe that mitigation in the form of a monetary contribution is appropriate if Albany Avenue is disturbed.

8. COMMENT: By amending the Atlantic City rule to regulate development of the Albany Avenue right of way under N.J.A.C. 7:7E-3.49(h) rather than N.J.A.C. 7:7E-3.49(f), the Department will facilitate the appropriate and critically-needed development of the Gateway site. In so doing, the Department would also be preserving an adjacent view corridor at Lincoln Place and generating mitigation monies that will be used to enhance Atlantic City's waterfront public access and parks. (1, 2)

RESPONSE: N.J.A.C. 7:7E-3.49(f) as amended states that development is discouraged in the street rights-of-way listed in paragraph (f)3, which include, "That portion of Albany Avenue (60 foot right-of-way) located southeast of Pacific Avenue as shown on the 2008 Atlantic City tax duplicate or an alternative alignment with a minimum 60 foot right-of-way approved by the Department which provides a comparable view corridor to the ocean and horizon." As previously indicated, if the Department determines that disturbance of a protected street end is in the public interest, it may permit that use provided that mitigating or compensatory measures are taken. If an application for a site was to be submitted to the Department which included disturbances to Albany Avenue, that application would be reviewed on its merits, including the extent to which the development proposed is in the public's interest. As stated above, the Department does not amend rules or grant permits and/or approvals based on amount of monetary mitigation that can be garnered as a result. Instead, development is allowed with mitigation when the Department determines that disturbing the resource of concern meets the applicable regulatory criteria. If the Department determined that an appropriate demonstration had been made, disturbance to Albany Avenue with appropriate mitigation could be allowed without amending the rules to regulate Albany Avenue under N.J.A.C. 7:7E-3.49(h).

It is important to note that Lincoln Place is being provided greater protection as part of these adopted amendments, independent of the status of Albany Avenue as a protected street end. Lincoln Place is being designated as a protected street end because of its unobstructed view and access to the boardwalk, and as an offset to the removal of Sovereign Avenue from the list of protected street ends so that there would be no net loss of protected street ends. Substituting Lincoln Place for Albany Avenue would not only lead to a loss in the number of protected street ends, but would also result in the loss of a historically important viewshed, diminished access to the beach and boardwalk, and loss of public parking for public access.

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

9. COMMENT: It is recommended the rule amendment be changed to increase the unit size from 650 square feet to 750 square feet. The suggested increase of the unit size from 650 to 750 square feet is based upon the need for diversity in product types in motel/hotels, to accommodate persons with disabilities, to reduce the environmental resources required to provide parking and to reduce the cost of construction of new hotels in coastal resorts. The 650-square-foot limit inhibits the ability of a developer to provide a diversified product in the type of hotel/motel that will be needed to accommodate the equally diversified clientele that we hope will be attending the expansive conventions. (4, 5)

10. COMMENT: The 650-square-foot limitation will dissuade developers from building in the Wildwoods if they cannot design rooms [page=1041] that will attract visitors who are visiting for varied reasons and staying for various lengths of time. (5)

11. COMMENT: It is imperative that owners have the flexibility to utilize an enhanced 750-square-foot allocation without bearing the extra burden of an additional parking space. The cost borne by the owner can be up to \$ 25,000 per space. (5)

RESPONSE TO COMMENTS 9 THROUGH 11: The goal of the adopted amendments is to ensure that adequate

on-site and/or off-site parking exists for coastal development located in municipalities which border the Atlantic Ocean. Before the amendments, the majority of developments in these municipalities provided two parking spaces per residential unit. The adopted amendments provide for a reduced parking requirement from two to one parking space per residential unit when those units are 650 square feet or less.

As stated in the Summary of the proposal, the Department determined that basing the parking requirements on the size of the dwelling unit would continue to ensure that adequate parking exists for residents of these types of units in municipalities which border the Atlantic Ocean, without impacting on-street parking for visitors and tourists. The reduction for smaller units will also reduce the amount of impervious surface required to meet the parking requirements.

While the Department believes that one parking space is appropriate for each dwelling unit that is 650 square feet or smaller, the Department agrees with the commenter that larger units will attract more varied visitors staying for different reasons and for different lengths of time. The Department believes that larger units will additionally attract more visitors per unit. Therefore, it is necessary to require a minimum of two parking spaces per residential unit exceeding 650 square feet to 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.

12. COMMENT: A minor clarification should be added to the proposed sentence in N.J.A.C. 7:7E-8.14(e), "Coastal development subject to this subsection shall provide sufficient on-site and/or off-site parking for its own use," to specify that sufficient parking is determined based upon the approved, Statewide Residential Site Improvement Standards (RSIS). The use of RSIS clarifies appropriate parking requirements for specific residential uses. (4)

RESPONSE: In determining how to amend the parking requirements in the coastal municipalities which border the Atlantic Ocean, the Department reviewed the Residential Site Improvement Standards (RSIS). The Department also reviewed the current parking requirements for several municipalities subject to the Department's rules. The Department concluded that while the intent of the RSIS is to standardize requirements throughout the State, the goal of N.J.A.C. 7:7E-8.14, **Traffic**, as it relates to parking, is to ensure that adequate onsite or off-site parking for residential development remains available for use by beachgoers, consistent with public trust rights, the Shore Protection 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). Consequently, the Department's requirements for parking in the coastal municipalities which border the Atlantic Ocean may not be consistent in all cases with RSIS.

The RSIS do not preempt or supersede State laws or standards, N.J.A.C. 5:21-1.5(e), and the Department chose not to use the Residential Site Improvement Standards, but to establish its own parking requirement. Since the Department of Community Affairs, and not the Department, implements the Residential Site Improvement Standards, the Department will not add this requirement to its rules.

13. COMMENT: One of the recommendations for Leadership in Energy and Environmental Design (LEED) certification for sustainable sites is to provide as little parking on the project site as possible and to not exceed the municipalities' required minimums. Reduced required parking minimizes area and resources expended to create the parking spaces, while supporting efforts to utilize public transit systems, ride-share programs, car pooling, etc. Using the "sustainable site" criteria for LEED encourages the construction of fewer parking spaces on-site. As such, less area is required for parking and therefore less natural resources are expended to construct them. (4)

RESPONSE: While the Department agrees with the concept of sustainable sites, it must balance such objectives with the goal of ensuring that the public has adequate parking within a reasonable walking distance for access to the ocean. Thus, the adopted amendments establish different requirements for residential units within one-half mile of an oceanfront beach or dune than for other landward areas. The adopted amendments 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. Further, the Department has reduced the requirement for two parking spaces to one space per unit for each dwelling unit that is 650

square feet or smaller, thereby requiring fewer parking spaces in some cases.

14. COMMENT: The commenter seeks, consistent with what they indicate to be the City of Wildwood's goal, to maximize the number of year-round, first-class hotel rooms that could be available so that a Convention Center in Wildwood could attract larger conventions throughout the entire year, instead of just the summer months. One of the features incorporated into the recently adopted zoning ordinance to increase the number of available hotel rooms was to give special consideration to the units in the building that incorporate a lock-out feature. The way this works is that a condominium unit owner of a typical two-bedroom with den unit will be able to design and furnish a portion of the unit as a hotel room, with a separate entrance and the ability to lock a door and separate it from the rest of the condo. Wildwood recognized this as a single unit for parking calculation purposes. By incorporating this lock-out feature, the number of available hotel rooms in one building was increased from 113 to 240 without changing the size of the building or increasing the number of units in the building. The change was accomplished by simply adding a door to the corridor in the lock-out rooms. In addition, assuming that the condo portions of the units are also placed into the hotel pool by the owners, the building, as proposed, would have the ability to have an additional 328 units which would allow the convention center to have a total of 568 new rooms available for guests.

In their latest zoning ordinance, Wildwood adopted the New Jersey DCA Residential Site Improvement Standards (RSIS) Parking standards which require this building, as designed, to have 470 parking spaces. Under the CAFRA rules as they have been proposed to be amended, this same building would require 898 parking spaces. This number of parking spaces is excessive for this building for several reasons:

-- In the full occupancy mode, most of the residents will be attending conventions at the Convention Center which is one block away from the above described building. Attendees will not require a parking space at the hotel and another parking space at the Convention Center, so it is logical that there will be a reduced number of regional parking spaces required.

-- A typical one-bedroom unit is over 650 square feet and thus requires two spaces. It is hard to imagine that every one-bedroom unit in the building would have two cars at the same time.

-- Wildwood and RSIS ordinances are based on historical parking ratio experience and are consistent with national standards. (7)

15. COMMENT: The parking requirement should be based on the number of bedrooms in a building. One space should be required for efficiencies and one-bedroom units, and two spaces for a two-bedroom or larger unit. This is the only reliable, consistent method of calculation and it always leads to a logical, reasonable result. The commenter provided the following comparison between the method proposed by the Department, Wildwood's method and the commenter's suggested method for determining the number of parking spaces.

Unit Description	Building Program			Parking Requirements			
	Condo Units	Lockout Rooms	Total Units	CAFRA (1)	Wildwood Ordinance (2)	RSIS (1)	Based on Bedrooms (1)
Studio / Lockout < 650 SF	20	0	20	20	16	16	20
Studio / Lockout > 650 SF	2	0	2	4	2	2	2
One Bedroom	44	0	44	88	35	35	44
One Bedroom + Lockout	195	195	390	585	254	312	390
Two Bedroom	63	0	63	126	82	82	126
Two Bedroom + Lockout	23	23	46	69	44	48	69
Three Bedroom	3	0	3	6	6	6	6
Total Required Spaces	350	218	568	898	438	501	657

Notes:

- (1) The lockout room is considered a separate unit in the calculation of required parking spaces.
- (2) The Wildwood Ordinance defines a lockout room as part of the condominium unit. It is not treated as a separate unit in the calculation of required parking spaces.

It is important to note that the RSIS calculation above assumes that the lock-out unit is a separate unit for calculation of the required number of parking spaces. (7)

RESPONSE TO COMMENTS 14 AND 15: Based upon the information provided by the commenter, it appears that in adopting the Residential Site Improvement Standards (RSIS) parking standards, despite the fact that the commenter refers to the units as "condos," the town in question chose to apply the standard for a one-bedroom high-rise which has the least restrictive parking standard of the RSIS. That standard requires 0.8 parking spaces per one-bedroom unit. In contrast, under RSIS, garden apartments and townhouses require more than one parking space per unit. Each requires 1.8 parking spaces for a one-bedroom unit, and according to an RSIS footnote, fractions of spaces exceeding 0.5 shall be rounded up and would therefore result in the need for two parking spaces (see N.J.A.C. 5:21-4.14, Table 4.4). The Department also reviewed the RSIS when evaluating parking requirements, but concluded that, if they were strictly followed (that is, 1.8 rounded to two parking spaces per each one-bedroom unit), it would result in the requirement for more than one parking space per 650-square-foot unit. Consequently, the Department did not use these standards because it believes it appropriate to require one parking space per 650-square-foot unit, since it believes that unit size will limit the number of individuals, and thereby the number of cars present at any given time.

The other difference between what the commenter is suggesting by way of the submitted chart, and the Department's adopted rules is that the commenter suggests that a "lockout" unit does not merit a separate parking space. The Department does not agree. The commenter states, "By incorporating this lock-out feature, the number of available hotel rooms in one building was increased from 113 to 240 without changing the size of the building or increasing the number of units in the building." Clearly, the addition of 127 rooms results in an increase in the need to be able to park at or near the hotel. Therefore, a lockout facility necessitates a minimum of one additional parking space. If the lockout facility is 650 square feet or less, one additional parking space will be required. If the lockout unit is greater than 650 square feet, then the requirement is that two spaces be provided for towns bordering the Atlantic Ocean and for residential developments within one-half mile of an oceanfront beach or dune. If an additional parking space is not provided, the renters will use public parking spaces, which will make parking unavailable for use by the public for access to the beach. Therefore, the Department believes the adopted parking requirements are necessary in order to provide sufficient parking to meet the needs of the residential development without affecting the availability of on-street parking for use by the visiting public.

16. COMMENT: The method of determining the number of required parking spaces under the proposed CAFRA rule is on the basis of unit size. If the unit is 650 square feet or less, it would require one space; if larger than 650 square feet, it would require two spaces. This method of calculation is not consistent with other recognized standards that have been adopted by the State Legislature, it is vague and unpredictable, and it is an unreliable method of determining required parking spaces. (7)

RESPONSE: Without the adopted amendment, coastal development located in municipalities which border the Atlantic Ocean would all require onsite and offsite parking at a ratio of two spaces per residential unit. With the amendment, the Department has tailored the parking provision to distinguish between residential development located within one-half mile of an oceanfront beach or dune and all other locations, with the intent of ensuring adequate public parking for access to the ocean. For those residential developments within one-half mile of an oceanfront beach or dune,

if units are 650 square feet or less, only one parking space is being required. All others continue to be required to provide two parking spaces. It is the Department's responsibility, as part of its rules, to balance development needs with the protection of natural resources and the public's right of access to those resources, which in this case must be facilitated by the provision of adequate parking. Consequently, the Department believes that its adopted standard is reasonable.

17. COMMENT: It is not logical that a hotel with 602 efficiency or one-bedroom units should require 602 parking spaces yet a 350-unit condo-hotel with 218 lock-out units would require 898 spaces. In essence, if the lock-out units are considered as separate units, such a condo-hotel would have 479 efficiency and one-bedroom units and 89 two- and three-bedroom units for a total of 569 units. (7)

RESPONSE: It is unclear how the commenter is arriving at the number of required parking spaces under the rules. As a result of adoption of these amendments, the parking space requirements for these scenarios are as follows: 602 efficiency units 650 square feet or smaller require 602 parking spaces (one parking space required for each residential unit of 650 square feet or smaller); 602 units larger than 650 square feet require 1,204 parking spaces (two parking spaces required for each residential unit exceeding 650 square feet). For the 350 condo-hotel units, if the units are 650 square feet or smaller, 350 parking spaces are required (one parking space required for each residential unit of 650 square feet or smaller); 350 condo-hotel units, with units exceeding 650 square feet, require 700 parking spaces (two parking spaces required for each residential unit exceeding 650 square feet). Each lockout unit of 650 square feet or less requires its own parking space. The difference between what the commenter is suggesting and the Department's adopted rules appears to be that the commenter suggests that a "lockout" unit does not merit a separate parking space. The Department does not agree. Clearly, the addition of 218 rooms results in an increase in the need to be able to park at or near the hotel. Therefore, a lockout facility necessitates a minimum of one additional parking space.

18. COMMENT: The definition of area is absent from the proposed rule. How is the 650 square feet limitation intended to be measured? For example, does balcony area count? Is area measured from the inside of the predominant wall surface, similar to the Building Owners and Managers Association (BOMA) method for measuring rentable area, or is it to the center of the wall between units? Do chases and vertical penetrations count in the area calculation? Is it meant to be conditioned space only? Once you begin to go down the path of building measurement, it would require a codification of measurement standards. (7)

RESPONSE: The 650-square-foot per unit measurement is based on the common vernacular for residential units. In April of 1996, the American National Standards Institute (ANSI) adopted guidelines for the measurement of residential buildings. Although these standards are not [page=1043] law, they are the accepted method for determining living area. The ANSI standards do not include balconies or other non-heated and non-finished areas, chases and/or vertical penetrations. The 650 square feet is therefore taken to mean actual floor space in the living area as measured from the inside of wall surfaces.

BOMA standards are methods used to calculate the square footage of commercial space and are not applicable to this portion of the rule which applies to residential units only.

19. COMMENT: As currently proposed, the parking rule will likely make it commercially impractical to develop any hotel-condo in Wildwood. With the cost to develop and build structured parking approaching \$ 45,000 per space, compliance with the CAFRA rules as proposed adds almost \$ 20 million to the cost of a project proposed by the commenter, which would in turn add almost \$ 50.00 per square foot to the cost of each unit. This would drive the sale price well beyond the Wildwood market. (7)

RESPONSE: It is unclear why the commenter believes that the adopted rules will add to the cost of development for any project. As stated in the Response to Comment 16, before adoption of these amendments, the rules required all coastal development to provide two spaces per residential unit. With the rule adoption, some coastal development, those developments with units of 650 square feet or smaller, are only required to provide one parking space per dwelling unit,

while the parking space requirement for the remaining, residential units exceeding 650 square feet remains unchanged.

Federal Standards Statement

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 CFR 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 adopted amendments do not exceed any Federal standards or requirements of the Federal Coastal Zone Management Act.

Full text of the adoption follows:

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.

...

ATLANTIC COUNTY

Bader Field, Atlantic City

Chelsea Heights, Atlantic City

Venice Heights, Atlantic City

Ventnor Heights, Ventnor 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.

Recodify existing (g)-(j) as (h)-(k) (No change in text.)

7:7E-3.49 Atlantic City

(a)-(e) (No change.)

(f) Development is discouraged in the street rights-of-way listed in (f)1 and 2 below as shown on the 2008 Atlantic City tax duplicate, and in the street right-of-way listed in (f)3 below, except in accordance with the provisions in (f)4 below.

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

i. Lincoln Place (50 foot right-of-way);

ii. (No change.)

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.-vii. (No change.)

2. (No change.)

3. That portion of Albany Avenue (60 foot right-of-way) located southeast of Pacific Avenue as shown on the 2008 Atlantic City tax duplicate or an alternative 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 5 below as shown on the 2008 Atlantic City tax duplicate provided that it either meets the standards of (g)6 and 7 below or of (i) below.

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

2. Christopher Columbus Boulevard (50 foot right-of-way);

3. Park Place (50 foot right-of-way);

4. Pennsylvania Avenue (72 foot right-of-way); and

5. New Jersey Avenue (50 foot right-of-way).

6. 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 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.

7. (No change in text.)

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

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 and 3 below, shall 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, 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.)

[page=1044] 2. Except as provided in (e)2i 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. (No change in text.)

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)2ii(1) through (5) below. The reduced parking requirement does not apply to any new development located outside of the existing footprint of development.

Recodify existing i.-iv. as (1)-(4) (No change in text.)

(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.

(f) (No change.)