

Federal Standards Statement

N.J.S.A. 52:14B-4 requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The adopted rezoning has not been formulated in accordance with the authority of, or in order to implement, comply with, or participate in any program established under Federal law.

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

The NJSEA's District Zoning Regulations serve as a regulatory tool for meeting the goals and rules established by the New Jersey Coastal Management Program. The adopted rezoning does not contain any requirements or standards in excess of those imposed under Federal law.

Full text of the adoption follows:

19:4-3.3 Official zoning map

Change the zoning designation of Block 4014, Lot 14.01, in the Borough of Ridgefield, from Environmental Conservation to Light Industrial B (0.98 acres) and Light Industrial B to Environmental Conservation (2.02 acres).

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be reviewed at the following locations:

New Jersey Sports and Exposition Authority
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071
Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey 08625

(a)

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY**District Zoning Regulations
Official Zoning Map****Block 451, Lots 19.01 and 20.01, in the Township of North Bergen****Adopted Amendment: N.J.A.C. 19:4-3.3**

Proposed: July 3, 2017, at 49 N.J.R. 1842(a)

Adopted: December 14, 2017, by the New Jersey Sports and Exposition Authority, Wayne Halsenbalg, President and CEO.

Filed: January 9, 2018, as R.2018 d.073, **with non-substantial changes** not requiring additional notice and public comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 5:10A-1 et seq., specifically 5:10A-7(b). See also N.J.A.C. 19:3-1.3 and 1.5.

Effective Date: February 5, 2018.

Expiration Date: May 4, 2023.

The rule adoption can also be viewed or downloaded from the New Jersey Sports and Exposition Authority (NJSEA) website at <http://www.njsea.com/njmc/land/public-notices.html>.

Summary

On January 11, 2017, a petition for rezoning was received by the New Jersey Sports and Exposition Authority (NJSEA) from the property owner, Hanover Holdings, LLC, regarding the property identified as Block 451, Lots 19.01 and 20.01 (subject property), located within the Hackensack Meadowlands District (HMD or District), in the Township of North Bergen. The subject property is currently zoned Environmental Conservation (EC) with a portion indicated as Right-of-Way (ROW) on

the District's Official Zoning Map. The petition requests that the NJSEA rezone the subject property from its existing zoning to Highway Commercial (HC).

The subject property is comprised of two unimproved parcels totaling approximately 18.06 acres and includes 16.54 acres in the EC zone and 1.52 acres indicated as ROW. The ROW portion of the subject property is located along the eastern side of the site and includes a 150-foot-wide easement to PSE&G for electric transmission towers. The easement between a former owner of the subject property and PSE&G was recorded on October 20, 1932, and places certain restrictions regarding the construction of structures within the easement, but allows for crossings of the easement by road, driveway and/or utilities. In accordance with N.J.A.C. 19:4-3.6, the ROW portion of the subject property is deemed to be within the same zone as the abutting property, which is the HC zone for the subject property. The ROW portion of the subject property is not proposed to be rezoned. The attached map depicts the location of the ROW on the property.

The subject property contains 3.57 acres of uplands, which are located predominantly in the center of the property along the northern property line between Lot 20.01 and adjacent Lot 21. A small portion of the 3.57 acres of uplands extends along the northern property line towards the east and provides access to Route 3 Ramp A, and another small portion of uplands extends into Lot 19.01. Approximately 14.49 acres of wetlands cover the remainder of the site. Access to the subject property from New Jersey State Highway Route 3 Ramp A was granted to the property owner by the NJDOT in 1961, as noted on the "General Property Parcel Map, Route 3, (1953) Section 4, Pleasant Avenue to 8th Street, showing existing right of way and parcels to be acquired, City of Union, Township of North Bergen and Town of Secaucus, County of Hudson," Sheets 1 and 2 of 19, dated February 1961.

The petitioner has provided a Jurisdictional Determination, dated November 8, 2015, from the U.S. Army Corps of Engineers (USACE) that confirms the location of wetlands on a portion of the site. The property was formerly thought to be comprised almost entirely of wetlands. To the north, the subject property is bounded by Block 451, Lot 21, which contains 3.66 acres of uplands and was previously rezoned from the EC zone to the HC zone in 2016 (North Bergen Motel Associates, LLC/Petition for Rezoning, NJSEA File SP-719, 48 N.J.R. 1378(a)). Located directly west and south of the subject property are several lots within the EC zone that are predominantly wetlands.

The EC zone, the current zone designation of Block 451, Lots 19.01 and 20.01, is intended to provide for the preservation and enhancement of the ecological values of wetlands, open water, and adjacent uplands within the District. The zone seeks to provide public access to these areas and encourage scientific and educational study with regard to wetland ecology. The petitioner's planning report states that the proposed rezoning to the HC zone would result in the potential ability of the applicant to develop the on-site uplands, which will contribute to job creation and the economic vitality of the area, while still protecting adjacent wetlands. The report also states that the development of the subject property, as proposed, would allow for the orderly development of commercial space on uplands. The proposed rezoning is intended to provide for the continued protection of existing, on-site wetlands by concentrating development on the uplands.

The petitioner has indicated a desire to construct a hotel on the subject property, in accordance with the HC zone regulations. Hotels are allowed in the HC zone (per N.J.A.C. 19:4-5.59), but not in the EC zone. Any proposed development in the rezoned area would be subject to the affordable housing requirements set forth by law or court order at the time of zoning certificate application, including the payment of fees associated with the Statewide Non-Residential Development Fee Act (P.L. 2008, c. 46, §§ 32-38), signed into law on July 17, 2008.

At its regularly scheduled meeting of February 16, 2017, the NJSEA Board of Commissioners authorized staff to prepare and submit a notice of proposal to the Office of Administrative Law for publication in the New Jersey Register and conduct a public hearing to obtain public input regarding this matter. The notice of proposal was published in the New Jersey Register on July 3, 2017, at 49 N.J.R. 1842(a). A public hearing was held on July 25, 2017, at the NJSEA Offices to receive comment on the proposal.

During the course of the public hearing, the petitioner amended their rezoning request to reduce the extent of the rezoning being requested. The original petition requested the rezoning of 18.06 acres, inclusive of 3.57 acres of uplands, which encompasses all of Block 451, Lots 19.01 and 20.01, and includes 16.54 acres in the EC zone and 1.52 acres indicated as ROW. At the public hearing, a revised request and map were presented for the rezoning of 6.58 acres of the subject property, including the 3.57 acres of uplands, resulting in only a portion of the subject property being rezoned from the EC zone to the HC zone. Taking the existing ROW portion into account, the resulting rezoning area would be 5.68 acres. The NJSEA therefore changes the Official Zoning Map upon adoption to reflect this request. This change continues to apply to property included within the original petition, and the nature of the rezoning proposal is not altered via a reduction of rezoned area on the property to which it shall apply. Therefore, this change will not require additional notice or public comment.

The public comment period ended on September 1, 2017.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on this matter was held on July 25, 2017, at the NJSEA Offices. Sara Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer, was the public hearing officer, with Sharon A. Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer, and Mia Petrou, P.P., AICP, Senior Planner, also present.

No recommendations were made by Ms. Sundell or NJSEA staff during the hearing. The hearing record is available for inspection in accordance with applicant law by contacting:

Sara J. Sundell, P.E., P.P.
Director of Land Use Management and Chief Engineer
New Jersey Sports and Exposition Authority
PO Box 640
One DeKorte Park Plaza
Lyndhurst, NJ, 07071
sara.sundell@njmeadowlands.gov

Allyson Kasetta, Esq., of the firm Connell Foley, appeared on behalf of the petitioner to support the proposal for the rezoning and the regulatory amendments. George Cascino, P.E., P.P., provided expert testimony in the fields of engineering and planning in support of the application.

Summary of Public Comments and Agency Responses:

During the public hearing, the petitioner's engineer and planner, George D. Cascino, P.E., P.P., presented an amendment to the proposed rezoning plan. Mr. Cascino's comments regarding the proposed amended rezoning plan and NJSEA's responses are summarized below:

1. COMMENT: The subject property's area is 18.06 acres, which encompasses all of Block 451, Lots 19.01 and 20.01, and includes 3.57 acres of uplands, as confirmed by the USACE in 2015. Mr. Cascino submitted a plan at the hearing that shows an amendment to the original petition, wherein only 6.58 acres are proposed to be rezoned from EC to HC instead of 18.06 acres, resulting in a decrease in the total area proposed to be rezoned. The original rezoning proposal followed the existing lot lines of Block 451, Lots 19.01 and 20.01. The suggested change to the rezoning petition results in a developable parcel that would include the 3.57 acres of uplands, but would only include a portion of the totality of Block 451, Lots 19.01 and 20.01. The rezoned area within the subject property is proposed to be reduced, although the total area of uplands on the rezoned property has not changed.

RESPONSE: The petitioner's suggestion at the public hearing to reduce the total area within the subject property that is proposed to be rezoned from EC to HC, from 18.06 acres to 6.58 acres, decreases the extent of the proposed revision to the Official Zoning Map from the original proposal. When taking into account the 0.90 acres of the subject property indicated as existing ROW within the petitioner's suggested rezoning area, the resulting area proposed to be rezoned from EC to HC is 5.68 acres.

Approximately 11.83 acres of on-site wetlands within Block 451, Lots 19.01 and 20.01, originally proposed to be rezoned would, therefore, remain in the EC and the ROW portion. This revision

represents a non-substantial change upon adoption that does not require reproposal, as there is a reduction in the amount of land that was originally proposed to be rezoned from the EC to the HC zone.

Therefore, the Official Zoning Map is changed upon adoption to reduce the extent of the area of the property to be rezoned from the EC zone to the HC zone from 18.06 acres (which encompassed the entirety of Block 451, Lots 19.01 and 20.01) to 5.68 acres (which encompasses a portion of Block 451, Lots 19.01 and 20.01). The rezoning will result in lots that are split-zoned; that is, have more than one zone per lot. Block 451, Lot 19.01 and 20.01, will both contain portions of the EC, and HC zones, as well as a portion indicated as existing ROW. The configuration of the zones is shown on the updated Official Zoning Map. The rezoned portion of the subject property will encompass 3.02 acres of uplands and 2.66 acres of wetlands in the HC zone. The remaining 11.83 acres of wetlands within Block 451, Lots 19.01 and 20.01, will remain in the EC zones and the portion indicated as existing ROW.

One member of the public, Captain Bill Sheehan, Hackensack Riverkeeper, spoke at the public hearing. Captain Sheehan's comments and the NJSEA's responses are summarized below:

2. COMMENT: Captain Sheehan commented at the public hearing that flooding is a concern in the Meadowlands area and there is localized flooding whenever there is an extremely high tide or coastal storm. In addition, there should be no variation in the waterway buffers.

RESPONSE: Development on the uplands portion of the subject property would not decrease the protective barriers along the Hackensack River or its tributaries. In some locations, wetlands do provide a buffer from storm surge; however, the wetlands located on the subject property are significantly distant from the Hackensack River, which would be the source of any potential storm surge.

The subject property is adjacent to a large tract of undeveloped wetlands that is drained by the Penhorn Creek, which joins with the Hackensack River approximately three miles away. Computer modeling of sea surge in North Bergen, prepared by the Meadowlands Environmental Research Institute (MERI) and available on the MERI website at <http://meri.njmeadowlands.gov/alerts/water-level/>, indicates that the wetlands adjacent to the subject site are flooded when the storm surge reaches an elevation of five feet (NAVD 88). These maps also show that the physical limit of the sea surge flooding does not increase when the surge elevation increases to eight feet (NAVD 88). The physical limit of the sea surge matches the wetlands line indicated on the land survey submitted by the petitioner. As such, the uplands portion of the site, which is located beyond the sea surge limits indicated on the mapping, typically would not be affected by a storm with similar intensity to Super Storm Sandy.

The proposed rezoning does not result in any change to, or diminishing of, NJSEA rules, or of the requirements of other agencies with jurisdiction regarding waterway buffers and the environment, including the New Jersey Department of Environmental Protection (NJDEP) and the USACE. No change to the adopted rules is proposed as a result of this comment.

3. COMMENT: Captain Sheehan stated that the subject property, which contains a small area of uplands along a highway ramp, does not have pedestrian access. In addition, the surrounding roadway system is often very congested and can be confusing for those who are not familiar with the area.

RESPONSE: The NJSEA recognizes the challenges regarding transportation circulation, both pedestrian and vehicular, in this part of the District. Any future development that may be proposed at the site would be required to address pedestrian and vehicular safety through the NJSEA zoning certificate application process at N.J.A.C. 19:4. The proposed rezoning does not result in any change to the layout of the transportation system in the District. No change to the adopted rules is proposed as a result of this comment.

4. COMMENT: The Meadowlands Conservation Trust, which is chaired by Captain Sheehan, would be interested in discussing conservation or preservation of the portion of the subject property that is not proposed to be rezoned. The remaining EC portion of the subject property that is comprised of wetlands should be protected from development.

RESPONSE: The proposed rezoning does not result in any change to, or diminishing of, NJSEA rules, or of the requirements of other agencies with jurisdiction regarding the environment, including the NJDEP and the USACE. The rezoning of the subject property would not preclude future discussions regarding conservation of the remaining portions of the tract. No change to the adopted rules is proposed as a result of this comment.

One written comment letter, dated September 1, 2017, from Captain Bill Sheehan, the Hackensack Riverkeeper, was received by the NJSEA during the public comment period, which also ended on September 1, 2017. The comments in the letter and NJSEA's response are summarized below:

5. COMMENT: The Hackensack Riverkeeper strongly opposes the petition as the requested rezoning would put at risk the many benefits wetlands provide to the surrounding communities, including flood control, storm buffer, pollution filter, sea level rise mitigation, wildlife nursery, as well as recreation and tourism opportunities for local business. The cost to the wetlands when a wetlands conservation designation is converted into an industrial one outweighs any potential benefit to the petitioner.

RESPONSE: While a portion of the subject property is comprised of wetlands, there is an area of uplands that can be developed without putting the wetlands acreage at risk of degradation. The intent of the rezoning is to expand the range of land uses allowed on the upland areas while protecting the existing wetlands. In the Hackensack Meadowlands District Zoning Regulations, N.J.A.C. 19:4-8.16(e) states that the filling of wetlands is not allowed without the required approvals of the governmental authorities with jurisdiction. The USACE maintains jurisdiction over wetlands in the District, and, as such, the NJSEA cannot issue approvals for work in wetlands without prior approval by the USACE. The uplands portion of the subject property, while adjacent to existing wetlands, has the benefit of the adjacent existing infrastructure to provide access and utilities to support a future development without infringing on wetland areas. While a portion of the subject property is not developable due to the presence of wetlands, the front portion closest to the right-of-way presents opportunities for upland development. In addition, the petitioner has not proposed an industrial zone, but has proposed a rezoning to the HC zone, which has a limited number of uses that are typically found adjacent to highways and major thoroughfares. No change to the adopted rules is proposed as a result of this comment.

6. COMMENT: Allowing the subject rezoning would set a dangerous precedent, put the greater District at risk and open the door for future rezoning proposals. The ability to protect the wetlands from harmful development would be severely impaired and a point of no return reached for the Meadowlands.

RESPONSE: There is no basis for the statement that the proposed rezoning will put the greater District at risk or open the door for future rezoning proposals. Property owners have the right to develop their properties in accordance with the zoning regulations set forth by law. In this case, the petitioner has requested a change in the zoning designation of the subject property in accordance with the regulatory procedures also as set forth by law. The basis of this petition is the fact that the subject property contains areas that, given the particular characteristics and configuration of the uplands and wetlands areas on the site, results in some limited development potential of the overall property. The revised zoning boundaries upon adoption will address the concerns of this commenter by further limiting the amount of property zoned for development. Furthermore, it does not follow that the entire portion of the property to be located in the HC zone will be subject to development. In addition to the hundreds of acres of protected wetlands that are owned

by public entities dedicated to ensure their protection, the District contains several areas where wetlands are located on privately owned property, such as the subject property, that are protected by the agencies with jurisdiction over their development, in particular the USACE. The area of the subject property containing wetlands and all other properties containing wetlands in the District remain under the jurisdiction of the USACE. Any future petitions to rezone other properties in the HMD will be reviewed based upon the specifics of the request and the record established in accordance with the regulatory requirements of the rezoning process. No change to the adopted rules is proposed as a result of this comment.

7. COMMENT: The NJSEA's 50-foot buffer requirement is set to ensure that development is kept at a safe distance from protected wetlands. The petitioner's project cannot promise to develop the subject property without compromising the portions of the property that are environmentally sensitive if they are also seeking to shrink the standard 50-foot buffer zone.

RESPONSE: The petitioner's request for a rezoning of the subject property to the HC zone does not result in any changes to the requirements of the District zoning regulations and design requirements, including rules regarding waterway buffers. The outcome of this rezoning petition does not result in any changes to the required 50-foot buffer from the Hackensack River, tributaries or streams located in the District. No change to the adopted rules is proposed as a result of this comment.

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The NJSEA's District Zoning Regulations serve as a regulatory tool for meeting the goals and rules established by the New Jersey Coastal Management Program. The adopted rezoning does not contain any requirements or standards in excess of those imposed under Federal law.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***):

19:4-3.3 Official zoning map

Change the zoning designation of ***a 5.68 acre portion of*** Block 451, Lots 19.01 and 20.01, in the Township of North Bergen, from Environmental Conservation to Highway Commercial.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be reviewed at the following locations:

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