

OTHER AGENCIES

NEW JERSEY MEADOWLANDS COMMISSION

Transportation Planning District Rules

Proposed New Rules: N.J.A.C. 19:7

Proposed Amendment: N.J.A.C. 19:4-4.5

Authorized By: New Jersey Meadowlands Commission

Robert R. Ceberio, Secretary

Authority: N.J.S.A. 13:17-99 et seq. and 13:17-1 et seq., specifically 13:17- 6(i).

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

Proposal Number: PRN 2008-226

A public hearing on this matter will be held on Tuesday, July 22, 2008 at 10:00 A.M. at the following location:

New Jersey Meadowlands Commission  
Two DeKorte Park Plaza  
Lyndhurst, NJ 07071

Submit written comments by September 5, 2008 to:

Sara J. Sundell, P.E., P.P.  
Director of Land Use Management  
New Jersey Meadowlands Commission  
One DeKorte Park Plaza  
Lyndhurst, NJ 07071

The agency proposal follows:

**Summary**

Pursuant to N.J.S.A. 13:17-1 et seq., specifically 13:17- 6(i), and 13:17-99 et seq., the New Jersey Meadowlands Commission (NJMC) proposes an amendment to N.J.A.C. 19:4-4.5, and

new rules at N.J.A.C. 19:7, Meadowlands Transportation Plan Rules.

Development in the Hackensack Meadowlands District (District) and its associated employment and housing opportunities are considered a part of the New York City regional economy. In order to remain an economically viable region, it is necessary for the District to plan ahead for future development and its associated effects on local transportation infrastructure. To meet this challenge, the Hackensack Meadowlands Transportation Planning District (MTPD) Act was enacted on June 24, 2005 by the New Jersey State Legislature (N.J.S.A. 13:17-99 et seq.). The MTPD Act requires the creation of a comprehensive District-wide transportation plan that would designate transportation projects and associated funding needed to sustain future economic growth. The MTPD Act empowers the NJMC to assess fees on District development based upon a technical analysis of its projected impact upon the transportation system. Such fees will ensure that funding is available to provide necessary infrastructure to meet the incremental travel demand burdens of future growth.

The NJMC subsequently prepared the Meadowlands District Transportation Plan (Plan), which fulfilled the requirements of the MTPD Act. The mission of the Plan is to improve mobility for passengers and freight throughout the District. The Plan considers anticipated growth within the District and identifies transportation improvements that will be needed to support such development over a time frame that reaches to the year 2030. A full range of candidate transportation improvements are recommended to address existing and future needs and provide reasonable travel conditions within the District. The estimated costs of the recommended improvements will be supported by fees from a future development within the District, through a fair-share methodology based on a collectively supported assessment framework, accounting for credits and exemptions. Ultimately, this will ensure that growth

within the District is supported and that resources will be available to mitigate future mobility concerns. The main provisions of the Plan include the following:

- Establishment of goals, policies, needs, and improvement priorities for all modes of transportation, including walking and bicycling, within the District for the next 24 years;
- Identification of transportation needs arising from anticipated future traffic passing within or through the District based upon future development anticipated to occur within the District, and reflected in the Master Plan;
- Proposal of transportation projects designed to address future development, prioritized over increments of five years;
- Inclusion of a financial element setting forth a statement of projected revenue and expenses, including all project costs;
- Identification of public and private financial resources which may be available to fund, in whole or in part, those transportation projects set forth in the Plan;
- Recommendation of types and rates of development fees, formulas to govern the assessment of those fees, and the projected annual revenue to be derived from the fees; and
- Allocation of public and private shares of project costs and allowable administrative costs, and establishment of the amount, schedule and collection of development fees.

The development fee is assessed only on development projects in the District that result in an impact to the transportation system. The development fee formula calculates the difference between the existing and proposed impact of proposed developments on the transportation system, accounting for each individual land use on the site. The fee formula converts both existing and proposed land uses into the number of vehicle miles of travel generated by those uses. The formula provides credit for trips that are internal to the site or

trips that are already on the transportation network. The formula also includes exemptions for de minimis changes and affordable housing units within a development.

The fee that results from this formula is a dollar value for each additional vehicle mile of travel added to the property. The fee increases in relation to the size and intensity of the proposed development project. A development which does not increase the amount of vehicle miles of travel generated by a property would not result in a fee, while a development which increases the amount of vehicle miles of travel generated by a property would generate a fee proportional to the level of the increase.

The Meadowlands District Transportation Plan and Meadowlands District Transportation Plan Fee Schedule were adopted by the NJMC Board of Commissioners (Commission) on November 19, 2007. At the same meeting, the Commission authorized the creation of the Meadowlands Transportation Planning District Fund, in accordance with the Act.

The NJMC staff was also authorized by the Commission on November 19, 2007 to proceed with this proposed rulemaking in order to establish the procedures and regulations regarding the administration of the Meadowlands District Transportation Plan.

A summary of the proposed new and amended rules follows:

The rules proposed for amendment include the following:

N.J.A.C. 19:4-4.5, Review and approval of application for zoning certificate: This section is proposed to be amended by expanding the existing criteria related to transportation review within the zoning certificate approval process, by adding regulations relating to the District Transportation Plan.

The proposed new rules include the following:

### **Chapter 7 District Transportation Plan Rules**

Chapter 7 contains rules particular to the administrative procedures of the District Transportation Plan. This chapter is divided into the following seven subchapters:

1. Title;
2. Purpose;
3. Definitions;
4. Meadowlands District Transportation Plan;
5. Transportation Development Fee Assessment;
6. Transportation Planning District Fund; and
7. Enforcement.

#### Subchapter 1. Title

N.J.A.C. 19:7-1.1 Title, establishes this chapter to be known as the District Transportation Plan Rules for the Hackensack Meadowlands District (District).

#### Subchapter 2. Purpose

N.J.A.C. 19:7-2.1 Purpose, establishes the general provisions for the assessment and collection of development fees pursuant to the Hackensack Meadowlands Transportation Planning District Act, at N.J.S.A. 13:17-99 et seq.

#### Subchapter 3. Definitions

N.J.A.C. 19:7-3.1, Definitions, sets forth definitions used throughout the District Transportation Planning Rules. It includes detailed definitions of transportation and traffic engineering terms, based on a thorough analysis of existing definitions and current transportation reference material.

#### Subchapter 4. Meadowlands District Transportation Plan

N.J.A.C. 19:7-4.1, Meadowlands District Transportation Plan, sets forth guidelines for updating, amending and supplementing the Plan. The Plan shall be updated and readopted by the NJMC within five years of the date of the previous Plan adoption.

#### Subchapter 5. Transportation Development Fee Assessment

This subchapter sets forth all aspects of the Transportation development fee formula and its administration, including components of the fee formula and provisions for reduction and credits to the development fee. This subchapter also provides procedures for payment of fees, granting of exemptions from the fee, refunds, and appeals. The development fee will be assessed on development projects in the District that result in an impact to the transportation system. The fee formula converts both existing and proposed land uses into the number of vehicle miles of travel generated by those uses, and calculates the difference between the existing and proposed impact of developments on the transportation system. The formula provides credit for existing trips and internal trips specific to the site. The formula also includes exemptions for de minimis changes to a site and development projects proposing affordable housing.

N.J.A.C. 19:7-5.1 Transportation Development Fee Formula, sets forth the Transportation Development Fee Formula that is used to compute the transportation development fee assessment for each land use within a proposed development. The transportation development fee equals the Institute of Transportation Engineers (ITE) Trip Generation Rate multiplied by the VMT Factor multiplied by the VMT Rate, where VMT means the Vehicle Miles of Travel, or  $\text{Fee} = (\text{ITE Trip Generation Rate}) \times (\text{VMT Factor}) \times (\text{VMT Rate})$ . The VMT Factor is derived in the Plan and subsequent versions of the Plan will derive new factors based upon the latest national housing study and transportation model statistics. The 2007 VMT Rate is derived within the Plan and increases annually based upon the Consumer Price Index for the Northeast Urban Series for the previous year. This section also defines and describes each component of this formula in detail and procedures for calculating the component. The ITE Trip Generation manual, 7th Edition, and ITE Trip Generation Handbook, March 2001, are each incorporated herein by reference, as amended and supplemented, copies of which can be obtained from the Institute of Transportation Engineers, 525 School Street, S.W., Suite 410, Washington, DC 20024. The ITE Trip Generation manual provides calculations and descriptions of land uses for trip generations for a proposed development. The ITE Trip Generation Handbook provides procedures for calculating trip generation and trip reductions for a proposed development.

N.J.A.C. 19:7-5.2, Transportation Development Fee Formula Reductions, sets forth the methodology by which a development fee may be reduced. The proposed rules provide that certain trips may be subtracted from the development fee, including existing trips, pass-by trips, and diverted trips. Existing trips are generated by existing land uses on a site. Pass-by trips are made as intermediate stops on the way from an origin to a primary destination that are made without a route diversion, while diverted trips are also intermediate stops between an origin and destination, including route diversion. Trip reductions will be calculated as a percentage in

accordance with the procedures in the ITE Trip Generation Handbook. This percentage will be applied to the formula as a reduction.

N.J.A.C. 19:7-5.3, Transportation Development Fee Credits, sets forth procedures for applying a development fee credit and provides necessary components of a Credit Memorandum of Agreement (CMOA) between the NJMC, applicant and property owner that is required for all fee credits. This section also details how various contributions on the part of the applicant, either through the construction of Plan elements or contribution of right-of-way will result in a transportation development fee credit. Transportation efficiency credits, as listed in the Plan, are available for strategies including construction of transit related improvements, transit-oriented development, infill development, or high-density residential development. Parking initiatives such as preferential parking, unbundled parking, and cash out parking also entitle an applicant to transportation efficiency credits. All credits must be implemented prior to the issuance of any final Certificate of Completion and/or Occupancy Certification for the application. The American Council for an Energy Efficient Economy (ACEEE) Green Book: The Environmental Guide to Cars & Trucks, is incorporated herein by reference, as amended and supplemented, copies of which can be obtained from the American Council for an Energy Efficient Economy, 1001 Connecticut Avenue, NW Suite 801, Washington, DC 20036. The ACEEE Green Book provides a green score to automobiles. The green score is a comprehensive measurement that takes into account a vehicle's fuel efficiency and emissions, as well as pollution from vehicle manufacturing, from the production and distribution of fuel and from vehicle tailpipes.

N.J.A.C. 19:7-5.4, Time of transportation development fee assessment, sets forth the timing requirements by which an applicant pays the development fee. This section also sets forth the annuity formula by which payments are determined, requirements for annual

payments and provisions for late payments or default. Applicants are required to pay the transportation development fee prior to the issuance of a zoning certificate by the NJMC for the proposed development. No zoning certificate will be issued without payment of the development fee. Payment may be made in a lump sum or as annual payments for five, 10, or 20 years. The value of annual payments shall be determined by the Annuity Formula, specifically,  $A = F [i (1+i)^n] / [(1+i)^n - 1]$ , where A=annual payment, F=transportation development fee, i=interest rate, and n=number of years in the payment plan. Annual payments are subject to a Payment Memorandum of Agreement (PMOA) between the property owner, applicant, and the NJMC. Annual payments are due yearly by the date of the original zoning certificate approval. The proposed rules set forth provisions for the collection of late payments and payments in default. Failure to make payments may result in late payment charges, the acceleration of the development fee, or a lien being placed on the property by the NJMC.

N.J.A.C. 19:7-5.5, Exemptions from transportation development fee, defines and sets forth the criteria for de minimis, temporary, and statutory exemptions from the transportation development fee. Criteria for de minimis exemptions include the alteration, expansion, or replacement of an existing residential or non-residential structure that does not increase the number of units of the original structure or increase the gross floor area of the original structure by more than 500 square feet, respectively. De minimis exemptions shall also be granted for the demolition of a structure and the construction of miscellaneous improvements, including, but not limited to, the placement of fill, signs, fences, and antennas. Temporary exemptions shall be granted to those applications that do not include a permanent structure and will permanently cease trip-generating operations within 18 months of zoning certificate approval. Statutory exemptions shall be granted for affordable housing units within a development, any

development that has received a zoning certificate approval before November 27, 2007, any development with an approved development agreement with the NJMC, and any approved development that has a material portion of construction commenced, pursuant to the Act.

N.J.A.C. 19:7-5.6, Transportation development fee refunds and property transfers, sets forth the criteria for the granting of refunds as well as the rights of an applicant when requesting a refund or appeal. Any transportation development fee not committed to a project under a CMOA or used for allowable expenses within 10 years of the date of collection shall be refunded with interest by the NJMC to the applicant and/or property owner. If an applicant or property owner decides to transfer the development or zoning certificate rights to another party after the development fee has been paid, all parties involved in the transfer shall enter into a Rights Memorandum of Agreement (RMOA) indicating which parties are entitled to any refund.

N.J.A.C. 19:7-5.7, Transportation development fee appeals, sets forth the rights of applicants who appeal their assessed transportation fee. An applicant may request in writing a reconsideration of the fee assessment and a hearing by the NJMC Executive Director within 90 days of the receipt of notification of the fee amount. Conditions under which reconsideration of the fee may be granted include the NJMC's failure to abide by the provisions of the Act, NJMC Resolution 07-104, dated November 19, 2007, which adopts the Plan, or the provisions of N.J.A.C. 19:7. An appeal of any decision made in connection with a reconsideration of the fee may be made, in writing, to the NJMC Board of Commissioners within 15 days of the reconsideration decision, or the applicant shall waive all rights to any further appeal. The NJMC Board of Commissioners will review the appeal and render a decision. This decision is a final administrative agency action subject to review by the Appellate Division of the Superior Court.

## Subchapter 6. Transportation Planning District Fund

This subchapter sets forth the requirements for the administration of and appropriations from the Transportation Planning District Fund at N.J.A.C. 19:7-6.1. The Transportation Planning District Fund, an interest bearing account, shall be controlled by the NJMC Chief Fiscal Officer. Any payments to or expenditures from the Fund shall follow a first-in/first-out methodology for transportation development fees and expenditures. The list of recommended improvements is found in the Plan in Table V-5, entitled, "Staging Plan for Identified Improvements." Regional transportation improvements are prioritized by this staging plan, which will be continually reassessed based on the location and timing of development. Because the Plan and the fund are regional in nature, the first fees deposited into the fund will not necessarily be applied to improvements related to the development that generated the fee. The Fund will also be used for allowable administrative costs incurred by the NJMC and Meadowlands Transportation Planning Board. Any fund expenditures must be approved by the NJMC Board of Commissioners and certified by the NJMC Chief Fiscal Officer.

## Subchapter 7. Enforcement

This subchapter sets forth provisions for enforcement action and severability guidelines. N.J.A.C. 19:7-7.1, Penalties and enforcement, sets forth the actions that may result in penalties or enforcement action being taken against an applicant. Failure to comply with the requirements of N.J.A.C. 19:7 will result in enforcement actions being undertaken pursuant to N.J.A.C. 19:4-4.21. Any lien created shall be enforceable in the same manner that taxes are made a lien against land, pursuant to Title 54 of the Revised Statutes.

N.J.A.C. 19:7-7.2, Severability, states that should one portion of the rules, or the application of any provision of the rules to a particular site, be found to be unconstitutional or invalid, the remaining portions of the rules or said provision to any other site shall not be affected.

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

### **Social Impact**

The amendment of N.J.A.C. 19:4-4.5 and the adoption of N.J.A.C. 19:7 will result in a positive social impact by improving the efficiency and safety of the transportation system throughout the District. The proposed rules will ensure that the Meadowlands Transportation Planning District is administered according to a set of procedures based upon the Hackensack Meadowlands Transportation Planning Act (P.L. 2005, c.102). The implementation of the proposed new rules will enhance the safety and well-being of those who live and/or work in the Hackensack Meadowlands District by requiring appropriate traffic mitigation measures for all new development. This will result in a less congested and subsequently safer transportation system, which will benefit residents and businesses alike.

The Transportation Plan considered anticipated growth within the District and identified transportation improvements that will be needed to support such development over a time frame that reaches to the year 2030. Identified improvements include roadway and intersection improvements, public transit improvements, pedestrian and bicycle facilities, and strategies for travel demand management (TDM) and intelligent transportation systems (ITS). The Plan recommended improvements that would increase mobility and access to and within the District for employees, residents and visitors to the various commercial, industrial,

recreational, sports and entertainment facilities. Each recommendation addressed a specific problem, deficiency, or opportunity based on a series of regional and local analyses.

The proposed new and amended rules will help to ensure that funding is available for transportation improvements that are made necessary by the developments that are subject to the regulations. Ultimately, this will ensure that growth within the District is supported and that resources will be available to mitigate future mobility concerns.

### **Economic Impact**

The development fee established by the proposed rules will be applied to developments that impact the transportation system. The development fee is derived using a formula that calculates the difference between the existing and proposed impact of the development on the transportation system, and accounts for each individual land use on the site.

The District's transportation system is thoroughly analyzed in the Meadowlands District Transportation Plan. The Plan includes an analysis of the existing and future transportation system with and without the future development projected in the District. The Plan also proposes and recommends transportation improvements designed to mitigate the specific impacts of the proposed development on the transportation system. The analysis allows for the needs and costs of these improvements to be allocated between public and private funds.

The Plan recommends \$95.4 million in transportation improvements and their administration. Development in the District by the year 2030 will defray those costs by \$38.2 million that is projected to be collected in transportation development fees. The remaining \$57.2 million in public improvement costs will be necessary to accommodate existing and future conditions regardless of the additional impact created by the District's projected development.

The fees are specific to the details of each development project, and can only be calculated once the existing and proposed land use information is provided by the applicant. A development which does not increase the amount of vehicle miles of travel generated by a property would not result in a fee, while a development that increases the amount of vehicle miles of travel generated by a property would generate a fee proportional to the level of the increase. Some land uses detailed in the Institute of Transportation Engineers Trip Generation manual allow for secondary uses within the primary land uses. These secondary land uses are limited to 20 percent of the primary land use within the rules. The development fee formula allows for the fee to be calculated with or without these secondary land uses, with the method resulting in a fee of a lower value prevailing. In order to lessen the immediate impact, the proposed rules provide applicants with the option of deferring payment of the fee through annual installments over five, 10, or 20 years.

The overall economic impact will ultimately be measured in the value of the calculated fees. A report entitled, "A Review of the Meadowlands District Transportation Fee Assessment," dated May 2007, prepared for the NJMC by James C. Nicholas, professor emeritus at the University of Florida, who specializes in the implementation of impact fees, provides an analysis and comparison of the proposed fee to other impact fees throughout the country. A copy of this document is available for review on the website of the NJMC at [http://www.meadowlands.state.nj.us/about/NJMC\\_archive.html](http://www.meadowlands.state.nj.us/about/NJMC_archive.html).

Alternative fee formulas from across the United States were considered for use in the Meadowlands District. The selected methodology produces the highest possible correlation between a development and its impact on the transportation network. Although the selected formula is complex, it is determined to be the fairest option by the NJMC because it takes into account many different variables that would not be considered under simpler alternatives. The

variables considered in the selected methodology include land use type and size, peak hours of travel, and number and length of trips.

The NJMC is not aware of any funding sources that may be impacted by the development fee. There are no significant economic impacts to implementing agencies. The NJMC is the agency with the administrative, enforcement, and oversight responsibility of the Plan. The costs incurred to review a development project will be similar to current costs incurred by the NJMC. Additional allowable costs incurred by the administration of the Plan implementation will be funded through a portion of the development fee.

#### **Federal Standards Statement**

N.J.S.A. 52:14B-4 requires State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The rules proposed for adoption have 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 C.F.R. 923.53(a)(1)). The NJMC 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 proposed rules relate to the mitigation of transportation impacts only and do not contain any requirements or standards in excess of those imposed under Federal law.

#### **Jobs Impact**

The NJMC does not anticipate that the proposed amendment and new rules will have a significant impact on job creation or retention in the State. Although the proposed amendment

and rules add to the cost of an individual development, direct impacts to the livelihood of any businesses and loss of jobs in the District are not anticipated because the proposed amendment and rules provide options to lessen the immediate financial burden to applicants, including the ability to pay over time, credits, and fee reductions.

Indirect impacts of the proposed amendment and rules were also considered by the NJMC. The proposed amendment and rules will expedite the creation of jobs in the construction industry by funding projects that may otherwise remain in the planning stages due to lack of availability of public funding. Ultimately, it is anticipated that the improvements to the transportation network envisioned by the Plan and implemented by the amendment and rules will aid in attracting and retaining businesses and jobs in the District by providing efficient movement of people and goods throughout the region.

### **Agriculture Industry Impact**

The NJMC does not anticipate that the proposed amendment and new rules will have any impact upon agriculture in New Jersey. The Hackensack Meadowlands District is an area comprised of commercial, industrial, and residential areas.

### **Regulatory Flexibility Analysis**

Under N.J.A.C. 19:4-4.5 and 19:7, all persons, including small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are subject to the same regulations. The proposed amendment and new rules will impose reporting, recordkeeping or other compliance requirements on small businesses. Under terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are those that employ less than 100 full-time

employees. Small businesses in the Meadowlands District include such groups as property owners, tenants, applicants and developers.

The proposed rules will apply to all development within the District and therefore have a direct impact on small businesses. There are approximately 4,200 lots within the District. These lots are owned by a wide spectrum of entities, from individuals to large corporations. The number of small businesses within the District is not tracked by the NJMC; however, the NJMC processes approximately 800 development applications per year. In doing so, it is clear that a large percentage of applicants in the District can be considered a small business.

To comply with the requirements of the proposed rules, a transportation development fee must be paid at the time a zoning certificate for new development is granted. Thus, the costs to seek zoning certificate approval may be proportionally greater for small businesses, since they tend to have more limited resources.

The costs for a business to expand will increase as a result of the transportation development fee established in the proposed rules. However, this will result in a reduction in other costs currently expended by an applicant in association with transportation mitigation. For example, the scope of a traffic impact analysis would be narrowed from a regional to a more localized perspective. The regional analysis and mitigation of impacts of new development will be incorporated into the Plan. Reducing the scope of the analysis, and therefore the amount of professional services required, will result in a cost savings to all applicants, including small businesses.

The amount of the development fee is directly related to the scope and size of the proposed development and is based on the number of trips generated, which varies on a case-by-case basis. There will be annual compliance costs associated with the proposed rules. If a transportation development fee is required, the applicant will be given the opportunity to either

pay this fee in a lump sum at the time of zoning certificate approval, or to pay the fee over time. The payments can be made over a period of five, 10, or 20 years. The ability to pay the fee over time may alleviate the immediate financial burden.

The proposed rules provide for a fee exemption or reduction if the NJMC determines that a specified proposed land use will have a beneficial, neutral, or minor adverse impact on transportation. Land uses that do not create an impact on facilities and services, or that are deemed de minimis, including alteration or expansion of nonresidential structures that do not expand the gross floor area by more than 500 square feet. Small businesses, by their very nature, would be more likely to receive fee exemptions or reductions under the proposed rules.

The purpose of the proposed rules is to provide for the mitigation of impacts to the transportation system posed by development pressures. The NJMC does not administer its regulations differently based on the size of a business because the mandates of the agency outlined in its enabling statute (N.J.S.A. 13:17-1 et seq.) require that they be uniformly imposed upon all property owners in the District. N.J.S.A. 13:17-1 et seq. provides no differentiation in compliance requirements specifically based on business size.

Accordingly, the proposed rules changes provides voluntary compliance incentives and provides no differentiation in compliance requirements based on business size. In order to provide for uniform and consistent applicability of these rules within the District, no differential treatment is afforded to small businesses.

### **Smart Growth Impact**

Although the provisions of the New Jersey State Development and Redevelopment Plan do not apply to the NJMC (pursuant to N.J.S.A. 52:18A-206), the NJMC Master Plan sets forth

smart growth principles to guide growth within the Meadowlands District consistent with State policy. The NJMC rules serve as the implementation tool of this policy.

Smart growth strategies seek to encourage sustainable development by directing growth to areas where there is existing infrastructure, including the Meadowlands District. However, Smart growth policies also recognize that existing infrastructure may need improvement to accommodate future growth. The proposed new and amended rules would implement a program that ensures new development contributes to equitably funding its share of transportation improvements to mitigate potential adverse impacts resulting to the regional transportation network. A portion of the funds collected will be utilized to improve mass transit opportunities in the District. The proposed rules provide credits toward the development fee for transit oriented development and transportation efficiencies including transportation system improvements and strategies which promoting public transit, walking, bicycling, and carpooling. Credits are available for the existing site development which will promote redevelopment over new development. Therefore, the amendment and new rules will positively impact the achievement of smart growth, both in the District, and on a regional level.

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

19:4-4.5 Review and approval of application for zoning certificate

(a) - (b) (No change.)

(c) The site plan, and any report(s) submitted in support of the application, shall be reviewed to determine if the proposal complies with the following, unless relief has otherwise been previously granted:

1. (No change.)

**2. Concerning transportation:**

[2.] **i.** The traffic circulation system, both on site and off site, and parking and loading facilities are adequate for the proposed use and designed to promote maximum safety, including the provision of adequate and efficient access to existing roadways and for emergency equipment;

**ii. Compliance with the requirements of N.J.A.C. 19:4-7.10, Performance standards; traffic; and**

**iii. Compliance with the requirements of N.J.A.C. 19:7, District Transportation Plan Rules.**

3. - 4. (No change.)

(d) - (g) (No change.)

**CHAPTER 7**

**DISTRICT TRANSPORTATION PLAN RULES**

**SUBCHAPTER 1. TITLE**

**19:7-1.1 Title**

**This chapter shall be known and may be referred to as the District Transportation Plan Rules for the Hackensack Meadowlands District (District).**

## SUBCHAPTER 2. PURPOSE

### 19:7-2.1 Purpose

This chapter establishes the general provisions for the assessment and collection of development fees pursuant to the Hackensack Meadowlands Transportation Planning District Act, subsection f of section 5 of P.L. 2005, c.102 (N.J.S.A. 13:17-99).

## SUBCHAPTER 3. DEFINITIONS

### 19:7-3.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Cash-out parking” means a program for providing payment to employees who agree to surrender the use of an on-site parking space.

“District Transportation Plan” or “ Meadowlands District Transportation Plan” or “Plan” means the Plan adopted pursuant to section 5 of P.L.2005, c.103 (C.13:17-99).

“Elements” or “Plan Elements” means projects and/or implementation of programs within the Plan, or phased portions thereof.

“Existing development” means the land uses located on a site prior to the implementation of any proposed development.

“Infill development” means development that is surrounded by non-vacant sites on a minimum of three sides.

“Internal capture rate” means the percentage reduction of trips applicable to the trip generation estimates for individual land uses within a multiuse site.

“Land use category” means the land use classification and description provided in the Institute of Transportation Engineers (ITE) Trip Generation manual, 7th Edition, incorporated herein by reference, as amended and supplemented, a copy of which can be obtained from the Institute of Transportation Engineers, 525 School Street, S.W., Suite 410, Washington, DC 20024.

“NJMC” means the New Jersey Meadowlands Commission.

“Non-vacant lot” means land that is developed and contains permanent buildings.

“Original structure” means the structure which exists on a site prior to the changes proposed in an application for development.

“Peak hour of adjacent street traffic” means the hour during which the combination of the trips generated by a site and the volume of the traffic passing the site on adjacent streets is the highest.

“Peak hour of generator” means the hour during which the highest volume of traffic enters and exits the site.

“Preferential parking” means a program for providing specific parking spaces for carpools, vanpools, and/or carsharing vehicles.

“Primary land use” means the land use category included in the ITE Trip Generation manual.

“Project costs” means expenses incurred in the planning, design, engineering, and construction of any transportation project, and shall include debt service.

“Secondary land use” means an additional land use specified within the description of the primary land use included in the ITE Trip Generation manual.

“Transit oriented development” means development that is located within defined walking distances of a train station or bus stop.

“Transportation Planning District” or “District” means the Hackensack Meadowlands District as defined in N.J.S.A. 13:17-13.

“Unbundle parking” means a program where the cost of a parking space is separated from the rent or purchase price of residential unit.

“Vacant lot” means land that has not been previously developed and does not contain any permanent buildings.

“Vehicle Mile of Travel” or “VMT” means a unit to measure miles traveled by an individual vehicle.

#### SUBCHAPTER 4. MEADOWLANDS DISTRICT TRANSPORTATION PLAN

##### 19:7-4.1 Meadowlands District Transportation Plan

- (a) The Meadowlands District Transportation Plan shall be incorporated herein by reference, as amended and supplemented, copies of which can be obtained from the New Jersey Meadowlands Commission (NJMC), One DeKorte Park Plaza, Lyndhurst, NJ 07071.
- (b) The Plan shall be updated and readopted by the NJMC within five years of the date of the previous Plan adoption.
- (c) The Plan shall also be updated, amended, and/or supplemented and subsequently readopted as follows:
  - 1. If the development projections, periodically calculated by the NJMC, differ from the Plan development projections beyond the following values:
    - i. The addition or subtraction in total Plan development projections exceeding 3,000 net trips; or
    - ii. The addition or subtraction of an individual development exceeding 1,500 net trips.

- (d) The Plan may be updated and readopted at any other time that the NJMC deems it to be necessary.

## SUBCHAPTER 5. TRANSPORTATION DEVELOPMENT FEE ASSESSMENT

### 19:7-5.1 Transportation development fee formula

- (a) The Transportation Development Fee Formula, listed in Figure 5-1 below, shall be used for computing the transportation development fee for each land use within a proposed development.

Figure 5-1

#### Transportation Development Fee Formula

$$\text{Fee} = (\text{ITE Trip Generation Rate}) \times (\text{VMT Factor}) \times (\text{VMT Rate})$$

where:

ITE = Institute of Transportation Engineers

VMT = Vehicle Miles of Travel

- (b) The terms above shall have the following meanings:
1. “Trip Generation Rate” means the determination of the number of trips produced by and attracted to each land use.
  2. “VMT Factor” means the average number of vehicle miles traveled for each trip type, categorized by land use.
  3. “VMT Rate” means the dollar amount to be assessed for every vehicle mile traveled as calculated in accordance with (c) below.

(c) The Trip Generation Rate shall be determined by calculations based upon the Institute of Transportation Engineers (ITE) Trip Generation manual, 7th Edition, and ITE Trip Generation Handbook, March 2001, both incorporated herein by reference, as amended and supplemented, copies of which can be obtained from the Institute of Transportation Engineers, 525 School Street, S.W., Suite 410, Washington, DC 20024;

1. The land use category selection for the determination of each Trip Generation Rate, as determined by the NJMC, shall be based upon the descriptions within the ITE Trip Generation Manual as they correspond to the existing and proposed land uses.

i. Secondary land uses shall be included within the primary land use category under the following conditions:

(1) The secondary land use is included within the ITE Trip Generation Manual description of the primary land use;

(2) The total of all secondary land uses shall not exceed 20 percent of the primary land use;

(3) Secondary uses are utilized in the calculation of fees for all existing and proposed land uses; and

(4) The fee calculation using secondary land use categories is less than the fee calculation performed using only primary land use categories.

ii. Secondary land uses in excess of 20 percent of the primary land use shall be considered separately as additional primary land use(s).

2. The terms utilized in the ITE Trip Generation manual for determining the Trip Generation Rate shall have the following meanings:
  - i. “Independent variable” means a physical, measurable, and predictable unit quantifying the land use, including, but not limited to, gross floor area, dwelling unit, hotel room, and acreage.
  - ii. “Time period” refers to the peak time period of vehicular travel for the transportation system or development, including, but not limited to, peak hour, peak hour of adjacent street traffic, and peak hour of generator.
  - iii. “Regression equation” means the specific mathematical relationship between trips and the related independent variable.
  - iv. “Average rate” means the number of trips per unit of the independent variable. The rate assumes a linear relationship between trips and the independent variable.
3. The selection of an independent variable for the Trip Generation Rate shall be as follows:
  - i. All industrial, retail, office, and medical uses shall utilize gross floor area as the independent variable.
  - ii. All residential uses shall utilize dwelling unit as the independent variable.
  - iii. All hotel/lodging land uses shall utilize the number of rooms as the independent variable.

- iv. All port and terminal, recreational, institutional, and service uses shall utilize the independent variable that is the cause for the variation in the number of trips generated by a land use, as determined by the NJMC.
  - v. When information for the independent variable specified above is not available from the ITE Trip Generation Manual, the independent variable shall be selected based upon the methods of the ITE Trip Generation Handbook, as determined by the NJMC.
4. The selection of the time period for the Trip Generation Rate shall utilize the information available for the morning and evening peak hour of adjacent street traffic.
- i. When peak hour of adjacent street traffic information is unavailable, the time period selected shall utilize the information available for A.M. and P.M. peak hour of generator.
  - ii. If neither peak hour of adjacent street traffic nor peak hour of generator is available, a similar ITE land use category may be used or adjusted if an appropriate procedure for the adjustment is approved by the NJMC. If a similar ITE land use category cannot be used or adjusted, a trip generation study following the procedures of the ITE Trip Generation Handbook (subject to the approval of the NJMC) shall be prepared by a New Jersey-licensed professional engineer or professional planner

specializing in transportation, or other individual determined by the NJMC to be qualified as an expert in traffic engineering.

5. The Trip Generation Rate shall be calculated following the procedure detailed in the ITE Trip Generation Handbook subject to the determination of the NJMC.
6. The procedure for rounding trip generation calculations shall be as follows:
  - i. Any trip generation calculations resulting in less than one total trip shall be rounded down to zero; and
  - ii. Any trip generation calculations resulting in a fraction greater than one total trip shall be rounded up to the nearest trip.

(d) The VMT Factor is listed in the table entitled, "Average Trip Length Factors," located in the Meadowlands District Transportation Plan.

1. Unless a specific sub-category value is provided, the general land use category factor shall be utilized.

(e) The VMT Rate is listed in the table entitled, "Calculation of Fee per Vehicle Mile," located in the Meadowlands District Transportation Plan.

1. The Vehicle Mile of Travel (VMT) rate shall be increased annually on the first day of February based upon the Consumer Price Index for the Northeast Urban Series, as released in January of the same year, or reset by the NJMC's adoption of an updated version of the Plan.

19:7-5.2 Transportation Development Fee Formula Reductions

(a) Reductions to the transportation development fee may be applied to a proposed development in accordance with this section.

(b) The terms utilized in the ITE Trip Generation Handbook shall have the following meanings:

1. "Existing trips" means trips that are generated by existing land uses on a site.
2. "Pass-by trips" means trips that are made as intermediate stops on the way from an origin to a primary trip destination without a route diversion.
3. "Diverted trips" means trips that are made as intermediate stops on the way from an origin to a primary trip destination that are made with a route diversion.
4. "Non-primary trips" means the total of all pass-by and diverted trips.
5. "Internal capture rate" means the percentage reduction applicable to the trip generation rates for individual land uses to account for the internal trips within a multi-use site that do not impact the surrounding transportation network.

(c) The fee associated with trips generated by any existing development on the subject site shall be subtracted from the transportation development fee calculated for the proposed development, as follows:

1. The fee for the existing development shall be calculated in accordance with N.J.A.C. 19:7-5.1.
2. The level of existing development on the site shall be determined by the following:

- i. The development that generated the maximum vehicle miles traveled at any time during the previous 10 years; or
  - ii. The transportation development fee paid for a proposed development resulting in the maximum vehicle miles traveled at any time during the previous 10 years.
- (d) All pass-by, diverted, and internal trips and associated vehicle miles traveled generated by a proposed development shall be reduced from the resulting transportation development fee as follows:
  - 1. The percentage of all trip reductions shall be calculated in accordance with the ITE Trip Generation Handbook, as determined by the NJMC.
    - i. Land uses shall qualify for pass-by and diverted trip reductions if the data is available in the ITE Trip Generation Handbook.
      - (1) The non-primary trip percentage shall be the sum of the diverted and pass-by trip percentages.
      - (2) As listed in the ITE Trip Generation Manual, land use 814, Specialty Retail Center, shall utilize the non-primary trip percentage data available for land use 820, Shopping Center, until data becomes available in an amended or supplemental version of the ITE Trip Generation Handbook.
      - (3) As listed in the ITE Trip Generation Manual, land use 813, Free-Standing Discount Superstore, shall utilize the non-primary trip percentage data available for land use 815, Free-Standing Discount Store, until data becomes

available in an amended or supplemental version of the ITE Trip Generation Handbook.

- ii. Internal trips shall be calculated utilizing the forms within the ITE Trip Generation Handbook entitled, "Multi-use Development Trip Generation and Internal Capture Summary."
- 2. Trip reductions shall be calculated as a percentage.
- 3. The percentage of internal and non-primary trips shall be reduced from the peak hour trips in accordance with the following:
  - i. The percentage of A.M. internal and non-primary trips shall be reduced from the A.M. peak hour trips, as determined by the NJMC.
  - ii. The percentage of P.M. internal and non-primary trips shall be reduced from the P.M. peak hour trips, as determined by the NJMC.

**19:7-5.3 Transportation development fee credits**

- (a) An applicant shall be entitled to a credit towards the transportation development fee for the value of construction or land contributions as detailed below and in accordance with a required Credit Memorandum of Agreement (CMOA) between the property owner, applicant, the NJMC, and other governmental agencies as necessary.
  - 1. The final credit shall be equal to the value of construction or land contributed by the applicant, but shall not exceed the values stated within the CMOA. Changes to any values or dates stated within the

CMOA shall be addressed by an amended CMOA prior to any monetary exchanges.

i. The CMOA shall specify the timing and values of monetary exchanges of any Hackensack Meadowlands Transportation Planning District (MTPD) or third party funding of expenditures related to the construction.

ii. When the CMOA includes a parking strategy, the applicant shall record the CMOA in the county registrar's office.

(1) Proof of county filing shall be submitted to the NJMC prior to zoning certificate approval.

(2) County filing shall only be released upon completion of all remaining payments.

iii. The value of a credit for applicant-constructed improvements resulting from the above actions shall be considered as follows:

(1) The CMOA shall be finalized prior to zoning certificate approval.

(2) The value of the credit for construction of Plan elements in the CMOA shall be based upon an NJMC approved estimate of the design, construction, inspection, and related expenses submitted by the applicant.

(3) Original receipts are required to be submitted to the NJMC for verification of expenditures made by the applicant. Receipts will be accepted for the following areas and are subject to the approval of the NJMC:

(A) Preliminary, final and/or as-built engineering services in conjunction with the project detailed in the MOA and subject to the inspection and approval of the NJMC.

(B) Construction services in conjunction with the project detailed in the CMOA and subject to the inspection and approval of the NJMC.

(4) If the sum of all original receipts does not exceed the value of the credit, the remainder of the credit is required to be paid to the NJMC by the applicant within 30 days of the written request from the NJMC.

(5) The value of all credited elements not completed within 90 days of the date agreed to in the CMOA shall be paid to the NJMC by the applicant within 30 days of the request from the NJMC.

2. The design and construction of improvements shall be subject to the following:

i. The improvements shall be coordinated with the NJMC and the agency(ies) having jurisdiction.

ii. The improvements shall conform to the standards of the agency(ies) having jurisdiction, and are subject to the approval of the NJMC.

(b) Applicant contributions of property, easements, and/or construction of Plan elements in association with an application, shall result in a credit to the transportation development fee as follows:

1. All credits shall be implemented prior to the issuance of any final Certificate of Completion and/or Occupancy Certification for the application. A final Certificate of Completion and/or Occupancy Certification shall not be issued without payment of the value of any outstanding credit for construction and/or property transfers.
2. Credits for construction of Plan elements shall be subject to the following:
  - i. The Plan elements shall be projects and/or implementation of programs within the Plan, or phased portions thereof.
  - ii. Any mitigation measures set forth in the traffic impact analysis (TIA), prepared in accordance with N.J.A.C. 19:4-7.10, which are fully funded by the applicant, MTPD Fund, and/or any other dedicated fund(s), shall be required to be constructed prior to the issuance of any final Certificate of Completion and/or Occupancy Certification for the application.
  - iii. The voluntary construction of any plan elements that are not mitigation measures set forth in the TIA shall be subject to the approval of the NJMC.
  - iv. No credits shall be granted for any on-site improvements, with the exception of credits for transit related improvements referenced in b(4) below.

3. Credits for contributions of property shall be subject to the following:
  - i. An appraisal shall establish the value of all ownership interest in property and easement contributions.
    - (1) The applicant shall be responsible for the cost of all appraisals.
    - (2) The appraisal shall be prepared by an independent New Jersey-licensed appraiser and shall be subject to the approval of the NJMC.
4. Credits for construction of transit related improvements shall be subject to the following:
  - i. The improvements shall be consistent with transportation efficient land uses that reduce automobile dependency, improve bicycle and pedestrian safety, and/or encourage alternatives to peak hour automobile travel.
    - (1) The improvements shall result in a reduction in automobile trips.
    - (2) The improvements shall be subject to the approval of the NJMC.
  - ii. The value of the credit shall be a percentage of the fee prior to reductions for construction and right-of-way contributions.
  - iii. The percentage of credit granted by the NJMC shall be based upon the value of the project and the estimate of reduction in automobile trips and vehicle miles of travel.

(c) An applicant shall be entitled to transportation efficiency credits towards the transportation development fee for the strategies listed in the table entitled, "Transportation Efficiency Credit Program Schedule," located in the Meadowlands District Transportation Plan in association with an application as follows:

1. All required plans and documents shall be finalized prior to zoning certificate approval.
2. Any strategy shall be implemented prior to the issuance of any final Certificate of Completion and/or Occupancy Certification for the application.
  - i. All strategies shall remain in effect for a minimum of 20 years.
  - ii. All parking strategies require an annual report to be submitted to the NJMC detailing the previous year's statistical use of the strategy.
    - (1) Annual reports are due to the NJMC by the first working day in February each year.
    - (2) Failure to submit the annual report within 30 days of receipt of a notice of late annual report shall constitute a default in the strategy.
  - iii. If the strategy is defaulted or does not remain in effect for a minimum of 20 years, the prorated value of the credit shall be paid to the NJMC by the applicant and/or property owner within 30 days of the written request by the NJMC. Any

balances remaining unpaid after 30 days shall result in a lien being placed on the property.

3. All credits are subject to NJMC approval and availability of funds in the Transportation Efficiency Credit Program established in the Plan.
4. The applicant shall prepare and submit a report containing the documentation and plans necessary to determine whether the application meets the criteria listed below for each available strategy, subject to the approval of the NJMC.

i. Transit oriented development:

(1) The land use categories eligible for this credit are residential, lodging, retail, and office.

(2) A transit oriented development credit shall not be granted in conjunction with an infill or high-density residential development.

(3) The development shall be located within a NJMC designated transit oriented development; or shall be located within the following average walking distances of a train station or bus stop within one of the corresponding average frequencies within a peak four hour period:

(A) Train Station:

I. One-quarter mile and 30-minute frequency;

II. One-half mile and 20-minute frequency;

or,

III. One mile and 10-minute frequency.

(B) Bus Stop:

I. One-quarter mile and 10-minute frequency

serving a minimum of four routes; or

II. One-half mile and 5-minute frequency

serving a minimum of five routes.

(C) Facility under construction meeting the above  
criteria.

ii. Infill development:

(1) The development shall be located on vacant lot(s) bound  
by non-vacant lots along a minimum of three property  
boundaries and a minimum of 60 percent of the property  
boundary; or shall be located on vacant lot(s) bound by  
non-vacant lots along a minimum of 70 percent of the  
property boundary.

(2) An infill development credit shall not be granted in  
conjunction with a transit oriented development credit.

iii. High-density residential development:

(1) The development shall consist of a minimum of 15 units  
per acre.

(2) A high-density residential development credit shall not be granted in conjunction with a transit oriented development credit.

iv. Unbundled parking:

(1) The land use categories eligible for this credit are residential uses with a minimum of 25 parking spaces.

(2) The price of the unbundled parking spaces shall be limited as follows:

(A) A minimum of \$5,000 per space for resale units.

(B) A minimum of \$50.00 per space per month for rental units.

v. Cash-out parking:

(1) The land use categories eligible for this credit are industrial, office, and institutional uses with a minimum of 25 parking spaces.

(2) The price of the cash-out parking program shall be a minimum payment of \$50.00 per parking space per month to the employee.

vi. Preferential parking:

(1) The percentage value of the preferential parking credit shall be equal to the percentage of spaces dedicated to preferential parking, but shall not to exceed five percent. The percentage of spaces shall be rounded down to the nearest whole percent.

(2) Industrial, office, and institutional:

(A) The land use categories eligible for this credit are industrial, office, and institutional uses with a minimum of 25 parking spaces.

(B) Carpool, vanpool, and/or carsharing parking spaces shall be eligible for preferential parking credit.

I. A minimum of 20 spaces or 80 percent of the preferential parking spaces, whichever is less, shall be reserved for high-occupancy vehicles consisting of three or more occupants.

II. A minimum of five spaces or 20 percent of the preferential parking spaces, whichever is less, shall be reserved for carsharing vehicles.

(C) Preferential parking spaces shall be the closest non-Americans with Disabilities Act (ADA) required spaces to the building entrance.

(3) Residential, retail, and lodging:

(A) The land use categories eligible for this credit are residential, retail, and lodging uses with a minimum of 25 parking spaces.

(B) Parking spaces for low-emitting and fuel-efficient vehicles and/or carsharing shall be eligible for preferential parking credit.

I. A minimum of 15 spaces or 60 percent of the preferential parking spaces, whichever is less, shall be reserved for low-emitting and fuel-efficient vehicles that are classified as Zero Emission Vehicles (ZEV) by the California Air Resources Board, P.O. Box 2815 Sacramento, CA 95812 or have achieved a minimum green score of 40 in the American Council for an Energy Efficient Economy (ACEEE) Green Book: The Environmental Guide to Cars & Trucks, incorporated herein by reference, as amended and supplemented, copies of which can be obtained from the American Council for an Energy Efficient Economy, 1001 Connecticut Avenue, NW Suite 801 Washington, DC 20036.

II. A minimum of 10 spaces or 40 percent of the preferential parking spaces, whichever is less, shall be reserved for carsharing vehicles.

- (C) Preferential parking spaces shall be the closest non-ADA required spaces to the building entrance.

**19:7-5.4 Time of transportation development fee assessment**

(a) The applicant shall be required to pay a transportation development fee prior to the issuance of a zoning certificate by the NJMC. Zoning certificates shall not be issued without payment of the transportation development fee.

(b) Payment for any fee shall be made as follows:

1. The fee shall be paid either in a lump sum payment or in a series of annual payments with a five, 10-, or 20-year payment schedule.

i. Annual payment plans are subject to a Payment Memorandum of Agreement (PMOA) between the property owner, applicant, and the NJMC.

(1) The applicant shall record the PMOA in the county registrar's office.

(A) Proof of county filing shall be submitted to the NJMC prior to zoning certificate approval.

(B) County filing shall only be released upon completion of all remaining payments.

ii. Annual payment plans shall include an interest rate equal to the U.S. Prime Rate plus one point or 100 basis points as determined at the close of business on the day prior to initializing the PMOA between the applicant and the NJMC.

iii. The value of the annual payments shall be determined by the Annuity Formula, listed in Figure 5-2 below:

Figure 5-2

Annuity Formula

$$A = F[i(1+i)^n]/[(1+i)^n-1]$$

where:

A = Annual Payment

F = Transportation Development Fee

i = Interest Rate

n = Number of Years in Payment Plan

iv. Annual payments are due yearly by the date of the original zoning certificate approval.

(1) Payments not received in full by the date due shall be subject to a late payment charge as follows:

(A) The late payment charge shall be equal to the daily interest on the value of the unpaid payment for the number of days the payment is late.

(B) The interest rate shall be as specified in (b)1ii.

(2) Failure to make an annual payment within 30 days of receipt of a notice of late payment shall constitute a default and shall obligate the applicant and/or property

owner to pay the balance of the transportation development fee in full.

(3) Default in payment shall result in a lien being placed on the property by the NJMC as provided in this chapter.

(4) Payments thereof shall be enforced within the same time and in the same manner and be the same proceedings as the payment of taxes is otherwise enforced under Title 54 of the Revised Statutes.

(c) A transportation development fee shall be paid prior to zoning certificate approval as follows:

1. Any application that requires a revised zoning certificate after November 28, 2007 shall be subject to a Transportation Development Fee with the exception of signs, fences/gates, site improvements, tanks, antennae, transmission towers and associated utility structures, recycling and/or refuse areas, loading doors, compactor and concrete utility pads, fill/stockpile operations, salt storage areas, construction trailers, guard shacks, storage sheds with a floor area of less than 400 square feet, remediation activities, temporary uses, and external mechanical equipment.
2. Any transportation development fee, assessed as per this subchapter, shall be adjusted upon the issuance of a revised zoning certificate.
1. No credit shall be provided for any previously paid fees, except as provided for in N.J.A.C. 19:7-5.6.

19:7-5.5 Exemptions from transportation development fee

- (a) Exemptions from the transportation development fee shall be granted for the de minimis, temporary, and statutory conditions of this section.
- (b) A de minimis exemption shall be granted to applications that have a beneficial, neutral, or minor adverse impact on the District transportation network. De minimis exemptions shall be granted for an application meeting the following conditions, as determined by the NJMC:
1. The alteration, expansion, or replacement of an existing residential structure meeting all of the following conditions:
    - i. The total number of units of the original structure is not increased;
    - ii. The units are included on one application;
    - iii. The construction does not modify the ITE Trip Generation manual land use classification; and
    - iv. The zoning certificate is issued within two years of the demolition or destruction of the original structure.
  2. The alteration, expansion, or replacement of an existing non-residential structure meeting all of the following conditions:
    - i. The alteration, expansion, or replacement does not increase the gross floor area, of the original structure, by more than 500 square feet;
    - ii. The total number of lodging rooms or selected independent variable is not increased;
    - iii. The modifications are included on one application;

- iv. The construction does not modify the ITE Trip Generation manual land use classification; and
    - v. The zoning certificate is issued within five years of the demolition or destruction of the original structure.
  - 3. The construction of only miscellaneous improvements, including placement of fill, signs, tanks, recycling areas, antennas, towers, utilities, walls, and fences.
  - 4. The demolition or removal of a structure.
- (c) An exemption shall be granted for applications that are temporary in nature and meet the following conditions, as determined by the NJMC:
  - 1. The development involves no permanent structure; and
  - 2. Any trips associated with the development will permanently cease within 18 months of zoning certificate approval.
    - i. Failure to permanently cease operation of the application's temporary trips within 18 months of zoning certificate approval shall render the use permanent and shall obligate the property owner and applicant to pay the required transportation development fee.
    - ii. Failure to pay the transportation development fee within 30 days shall result in a lien being placed on the property by the NJMC as provided in this chapter.
- (d) A statutory exemption shall be granted in accordance with the Hackensack Meadowlands Transportation Planning District Act, pursuant to subsection f of section 5 of P.L.2005, c. 102 (N.J.S.A. 13:17-99). Statutory exemptions shall be

granted for an application meeting any of the following conditions, as determined by the NJMC:

1. Any development for which a zoning certificate has been issued prior to the NJMC adoption the Meadowlands District Transportation Plan on November 28, 2007.
2. Any development that has an approved development agreement with the NJMC, including the mitigation of transportation impact.
3. Any development for which construction of a material portion of the development has commenced after the date on which a development agreement was executed.
4. Any low and moderate income housing units that are constructed pursuant to the Fair Housing Act, P.L.1985, c. 222 (N.J.S.A. 52:27D-301 et seq.) or under court order or settlement of a builder's remedy lawsuit.

19:7-5.6 Transportation development fee refunds and property transfers

(a) Refunds from the transportation development fees collected, plus earned interest, shall be granted as follows:

1. Within 10 years of the date of collection, any transportation development fee not committed to a transportation project or used for allowable administrative costs shall be refunded with accrued interest to the applicant and/or property owner.

(b) Any applicant and/or property owner who transfers the rights of a development or zoning certificate which is subject to a transportation development fee shall enter into a Rights Memorandum of Agreement

(RMOA) with all parties involved in the transfer of rights, in accordance with this section and as follows:

1. The RMOA shall indicate which parties are entitled to receive any refund;
2. The RMOA shall be filed with the county;
3. Proof of filing with the county shall be submitted to the NJMC; and
4. If the applicant and/or property owner fails to enter into an RMOA, the refund shall be made to the property owner at the time of refund.

19:7-5.7 Transportation development fee appeals

(a) An applicant who is assessed a transportation development fee is granted the following rights to reconsideration and appeal:

1. An applicant may request in writing a reconsideration of the transportation development fee assessment and a hearing by the NJMC Executive Director or designee within 90 days of the receipt of notification of the amount of the fee for the following conditions:
  - i. The NJMC did not abide by the provisions of P.L. 2005, c.102 (N.J.S.A. 13:17-95 et seq.);
  - ii. The NJMC did not abide by the provisions of NJMC Resolution 07-104; or
  - iii. The NJMC did not abide by the provisions of this chapter.
2. An applicant may appeal in writing to the NJMC any decision made in connection with the reconsideration of the transportation development fee as follows:

- i. The appeal shall be made within 15 days of the reconsideration decision or the applicant shall waive all rights to any further appeal.
- ii. The NJMC Board of Commissioners shall review the record of the hearing and render its decision, which shall constitute final administrative agency action subject to review by the Appellate Division of the Superior Court.

## SUBCHAPTER 6. TRANSPORTATION PLANNING DISTRICT FUND

### 19:7-6.1 Transportation Planning District Fund

- (a) Transportation development fees shall be deposited into the Meadowlands Transportation Planning District Fund (Fund), an interest bearing account.
  1. The Fund shall be under the control of the NJMC Chief Fiscal Officer.
  2. Payments to and expenditures from the Fund shall follow a first-in/first-out methodology for transportation development fees and expenditures.
- (b) The Fund shall be appropriated as follows:
  1. The Fund shall be used to defray the costs of plan elements and allowable administrative costs incurred by the NJMC and Meadowlands Transportation Planning Board for administration, management, development, update, amendment, and supplement of the Meadowlands District Transportation Plan and the Meadowlands Transportation Planning District.

2. Fund expenditures shall be subject to appropriation by the NJMC Board of Commissioners and certification by the NJMC Chief Fiscal Officer.

## SUBCHAPTER 7. ENFORCEMENT

### 19:7-7.1 Penalties and enforcement

- (a) Failure to comply with the requirements of this chapter, including any zoning certificate approval, payment of required fees, and/or construction of required improvement(s), shall result in enforcement action by the NJMC pursuant to N.J.A.C. 19:4-4.21.
- (b) Any lien created pursuant to this chapter shall be enforceable on the subject property in the same manner that taxes are made a lien against land pursuant to Title 54 of the Revised Statutes.

### 19:7-7.2 Severability

- (a) The provisions of this chapter shall be separable, in accordance with the following:
  1. If any section, subsection, paragraph, sentence, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this chapter.
  2. If the application of any provision of this chapter to a particular property, building or structure is for any reason held to be unconstitutional or invalid, such decision shall not affect the application of said provisions to any other property or structure.