

CHAPTER 23
ADMINISTRATION OF LAKE RESTORATION
PROJECTS

Authority
 N.J.S.A. 58:10A-1 and 58:11A-1.

Source and Effective Date
 R.2002 d.410, effective November 20, 2002.
 See: 34 N.J.R. 2399(a), 34 N.J.R. 4436(a).

Chapter Expiration Date
 Chapter 23, Administration of Lake Restoration Projects, expires on November 20, 2007.

Chapter Historical Note
 Chapter 23, Flood Control Bond Grants, was adopted as R.1979 d.202, effective June 22, 1979. See: 11 N.J.R. 121(a), 11 N.J.R. 277(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Flood Control Bond Grants, was readopted as R.1984 d.277, effective June 18, 1984. See: 16 N.J.R. 668(a), 16 N.J.R. 1765(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Flood Control Bond Grants, was readopted as R.1989 d.348, effective June 9, 1989. See: 21 N.J.R. 1051(a), 21 N.J.R. 1903(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Flood Control Bond Grants, was readopted as R.1994 d.308, effective May 27, 1994. See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Flood Control Bond Grants, expired on May 27, 1999.

Chapter 23, Administration of Lake Restoration Projects, recodified and renamed from 7:9-15. Grants for Restoring Publicly Owned Freshwater Lakes, was readopted as R.2002 d.410, effective November 20, 2002. See: Source and effective date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

7:23-1.1 Scope of rules

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Department of Environmental Protection concerning policies and procedures for grants and loans to assist State agencies, local governments

or similar organizations, or private lake associations or similar organizations, in carrying out the restoration of freshwater lakes pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Water Quality Planning Act, N.J.S.A 58:11A-1 et seq.

Amended by R.2002 d. 410, effective December 16, 2002.
 See: 34 N.J.R. 2399(a), 34 N.J.R. 4436(a).

Inserted "and loans" following "for grants", "State agencies, local governments or similar organizations, or private lake associations or similar organizations" following "to assist" and deleted "publicly owned" following "restoration of".

7:23-1.2 Construction

This subchapter shall be liberally construed to permit the department and its various divisions to discharge their statutory functions.

7:23-1.3 Purpose

(a) This chapter is promulgated for the following purposes:

1. To set forth grant and loan eligibility; and
2. To establish policies and procedures for distribution of funds to State agencies, local governments or similar organizations, or private lake associations or similar organizations for Phase I Diagnostic-feasibility studies and for Phase II Implementation activities.

Amended by R.2002 d. 410, effective December 16, 2002.
 See: 34 N.J.R. 2399(a), 34 N.J.R. 4436(a).

In (a), substituted "chapter" for "subchapter" in the introductory paragraph, inserted "and loan" preceding "eligibility" in 1 and rewrote 2.

7:23-1.4 Definitions

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

"Applicant" means the governmental agency which has jurisdiction over or controls access to the freshwater lake, or the governmental agency which is representing the private owner with this jurisdiction or control.

"Center" means a compact form of development with a core, as defined in the State Development and Redevelopment Plan. Centers range in size from Urban Center, Regional Center, Town, Village, to Hamlet.

"Commissioner" means the Commissioner of the Department.

"Department" means the Department of Environmental Protection.

"EPA" means the United States Environmental Protection Agency.

"Freshwater lake" means any inland pond, reservoir, impoundment, or other similar body of water that has recreational value, that exhibits no oceanic and tidal influences, and that has a total dissolved solids concentration of less than one percent.

"Phase I Diagnostic-Feasibility Study" means a two-part study to determine a lake's current condition and to develop possible methods for lake restoration and protection. The two parts of this study are the diagnosis of water quality conditions, to include determination of pollutant loading sources, and the development of a feasible management/restoration plan which would address water quality conditions at the lake.

"Phase II Implementation Project" means the implementation of any water quality improvement process(es) which have been recommended by a Phase I Diagnostic-Feasibility Study.

"Private lake" means a lake owned by a private lake association or similar organization, or a lake to which access is not provided to the general public.

"Public lake" means a lake to which public access is provided through publicly owned contiguous land so that any person has the same opportunity to enjoy nonconsumptive privileges and benefits of the lake as any other person.

"State-owned lake" means a lake owned by the State of New Jersey.

"State Development and Redevelopment Plan" means the Plan adopted pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et seq.

Amended by R.2002 d. 410, effective December 16, 2002.
See: 34 N.J.R. 2399(a), 34 N.J.R. 4436(a).
Rewrote the section.

7:23-1.5 Funding eligibility

(a) To be eligible for grant funding for a public lake, the lake for which the application is being submitted shall meet the definition of public lake as defined at N.J.A.C. 7:23-1.4;

(b) To be eligible for grant funding for a State-owned lake, the lake for which the application is being submitted shall meet the definition of "State-owned lakes" at N.J.A.C. 7:23-1.4.

(c) To be eligible for loan funding for a privately owned lake, the lake for which the application is being submitted shall meet the definition of "private lake" at N.J.A.C. 7:23-1.4.

Amended by R.2002 d.410, effective December 16, 2002.
See: 34 N.J.R. 2399(a), 34 N.J.R. 4436(a).
Rewrote the section.

7:23-1.6 Types of assistance

(a) Subject to the availability of funds, the Department will administer the following types of grants pursuant to this chapter for public lakes:

1. Subject to the availability of funds, approved Phase I Diagnostic-Feasibility Studies will be funded through the Department pursuant to the following formulas:

i. If an EPA grant is awarded for the project, a maximum of 70 percent of allowable costs shall be funded by EPA; a maximum of fifteen percent of allowable costs shall be funded by the Department; and the remainder of the costs shall be funded by the applicant.

ii. If no EPA grant is awarded for the project, a maximum of 50 percent of allowable costs shall be funded by the Department and the remainder of the costs shall be funded by the applicant.

2. Subject to the availability of funds, approved Phase II Implementation activities will be funded through the Department pursuant to the following formulas:

i. If an EPA grant is awarded for the project, a maximum of 50 percent of allowable costs shall be funded by EPA; a maximum of 40 percent of allowable costs shall be funded by the Department; and the remainder shall be funded by the applicant.

ii. If no EPA grant is awarded for the project, a maximum of 75 percent of allowable costs shall be funded by the Department and the remainder of the costs shall be funded by the applicant.

3. In the event that legislation is enacted appropriating funds for a specific lake restoration project which indicates that a different funding formula shall be used, that funding formula designated by the legislature shall apply.

(b) Subject to the availability of funds, the Department shall administer the following types of grants pursuant to this chapter for State-owned lakes:

1. For Phase I Diagnostic-Feasibility Studies, 100 percent of allowable costs shall be funded by the Department; and

2. For Phase II Implementation Projects, 100 percent of allowable costs shall be funded by the Department.

(c) Subject to the availability of funds, the Department shall administer the following types of loans pursuant to this chapter for private lakes:

1. For Phase I Diagnostic-Feasibility Studies, a maximum 50 percent of allowable costs shall be funded by the Department and the remainder of the costs shall be funded by the applicant; and

2. For Phase II Implementation Projects, a maximum 75 percent of allowable costs shall be funded by the Department and the remainder shall be funded by the applicant.

Amended by R.1987 d.447, effective November 2, 1987.

See: 19 N.J.R. 909(a), 19 N.J.R. 2000(a).
(a)2ii maximum raised from 50 to 75 percent.
Amended by R.2002 d.410, effective December 16, 2002.
See: 34 N.J.R. 2399(a), 34 N.J.R. 4436(a).
Rewrote the section.

7:23-1.7 Application ranking/evaluation criteria for grants and loans

(a) The categories used to rank lake restoration applications are as follows. Those lakes with the highest point totals shall receive priority for funding.

1. Lake use and recreational potential: Four major uses, including boating, fishing, swimming and aesthetics, are utilized in evaluating lake use and recreational potential. Up to three points each are awarded if the potential use includes boating, fishing, or aesthetics. The following tables show points awarded for each recreational use:

i. Boating Criteria for Ranking Public State-owned and Private Lakes

<u>Category</u>	<u>Points</u>
Access/use for sailboats/powerboats (Drive-up boat ramp)	Three points
Limited access for boats (Open shoreline available from which to launch a car-top type boat)	One point

ii. Fishing Criteria for Ranking Public and State-owned Lakes

<u>Category</u>	<u>Points</u>
High quality fishery (Lake exhibits potential as a high quality, recreational facility)	Three points
Other fishery	One point

iii. Aesthetics Criteria for Ranking Public, State-owned and Private Lakes

<u>Category</u>	<u>Points</u>
Significant contact use (Park has restroom facilities, visitor/environmental center, and/or athletic/recreational facilities)	Three points
User facilities development (Open space adjacent to the lake)	One point

iv. Swimming Criteria for Ranking Public, State-owned and Private Lakes. Up to six points shall be awarded for swimming potential. This number is higher than for other uses because swimming requires consistently higher quality water than the other recreational uses.

<u>Category</u>	<u>Points</u>
Use available	Six points
Use impaired	Three points
No designated swimming	0 points

2. Population served by the lake: Local and county populations are both considered in determining potential user populations. The following criteria shall be used for ranking public and State-owned lakes only:

<u>i. Local population</u>	<u>Points</u>
<1,000	0 points
1,000-5,000	Two points
5,000-15,000	Four points
15,000-30,000	Six points

30,000-50,000	Eight points
>50,000	10 points
<u>ii. County population</u>	
<100,000	<u>Points</u> One point
100,000-200,000	Two points
>200,000-400,000	Three points
>400,000-600,000	Four points
>600,000	Five points

3. Local interest/involvement: Local interest and involvement is considered to be the critical element in a successful lake restoration project. As such, this category shall receive the highest maximum point value. The following criteria shall be used for ranking public, State-owned and private lakes:

<u>i. Category</u>	<u>Points</u>
Minor involvement in management/restoration (Contact from local government and lake users; written expressions of interest; private lake association meetings)	Five points

Average involvement in management/restoration (Written expression of interest, governmental and volunteer support; private lake association meetings and volunteer activities associated with water quality) 10 points

Very involved in management/restoration (Lake association/users group financial commitment, strong governmental and volunteer support; includes the adoption and/or designation of a lake management or restoration district; private lake association meetings with volunteer and financial investment in water quality activities) 20 points

4. Consistency with the State Development and Redevelopment Plan: Up to 10 points are awarded for projects that are consistent with the goals and policies of the State Development and Redevelopment Plan. The following criteria shall be used for ranking public and State-owned lakes only:

<u>i. Category</u>	<u>Points</u>
The lake is located within a center formally designated by the State Planning Commission.	Eight points

The lake is located within a Critical Environmental/ Historical Site formally designated by the State Planning Commission, located within Planning Area 5 (Environmentally Sensitive Planning Area), located within Planning Area 4B (Rural/ Environmentally Sensitive Planning Area), or located within the jurisdiction of the Pinelands Protection Act. Two points

5. Coordination with other restoration/maintenance programs: The Department encourages comprehensive approaches to lake restoration projects. Accordingly, any applications which involve other Department sponsored activities shall receive the following points. These criteria shall be used for ranking public, State-owned and private lakes:

i. Other Activity Dam Safety Restoration	<u>Points</u> Three points
Wastewater Treatment Financing Program for non-point source projects; and/or lake water quality recognized as component of watershed management activities	Five points

6. Priority for Phase II Implementation Projects. The following criteria shall be used for ranking public, State-owned and private lakes:

i. <u>Category</u> Applicant has completed a Phase I Diagnostic-Feasibility Study	<u>Points</u> Five points
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New Rule. R.2002 d.410, effective December 16, 2002.
See: 34 N.J.R. 2399(a), 34 N.J.R. 4436(a).

7:23-1.8 Project period

(a) The project period for Phase I projects shall not exceed three years.

(b) The project period for Phase II projects shall not exceed four years.

7:23-1.9 Public participation

(a) The applicant for a Phase I grant shall provide for, encourage, and assist public participation in developing a proposed lake restoration project. The applicant shall solicit public comment on the plan of study, prepare a summary of responses to the public comment, and submit the summary as part of the Phase I application.

(b) Phase I grant recipients shall solicit public comment in developing, evaluating, and selecting alternatives, in assessing potential adverse environmental impacts, and in identifying measures to mitigate any adverse impacts that were identified.

1. The grantee shall provide information relevant to these decisions in fact sheet or summary form and distribute such information to the public at least 30 days before selecting a proposed method of lake restoration.

2. The grantee shall hold a formal or informal meeting with the public after all pertinent information is distributed.

3. A formal public hearing shall be held if the grantee selects a lake restoration method which involves major construction, dredging, or significant modifications to the environment, or if the department determines that a hearing would be beneficial.

(c) Phase II grant applicants shall hold a formal public hearing if one has not been held subsequent to completion of Phase I and prepare a summary of the responses to all public comments. The applicant shall submit the summary along with copies of any written comments to the Department with the Phase II application.

7:23-1.10 Program administration

(a) The program shall be administered by Land Use Management Program.

(b) Within 90 days of receiving a complete application, the Department will either:

1. Conditionally approve the project for funding in an amount determined to be appropriate for the project, and if federal funding is available, submit the application to EPA for final approval;

2. Return the application to the applicant due to lack of funding; or

3. Disapprove the application and state the reasons for disapproval.

(c) The Department will establish a priority list for all applications received before September 1 of each fiscal year.

(d) Requests for further information concerning this program as well as program proposals should be directed to:

New Jersey Department of Environmental Protection
Land Use Management
PO Box 427
Trenton, New Jersey 08625-0427

Amended by R.2002 d.410, effective December 16, 2002.

See: 34 N.J.R. 2399(a), 34 N.J.R. 4436(a).

In (a), substituted "Land Use Management Program" for "the Division of Water Resources"