

CHAPTER 4
THE NEW JERSEY REGISTER OF
HISTORIC PLACES RULES

Authority

N.J.S.A. 13:1B-15.108 et seq. and 13:1B-15.128 et seq.

Source and Effective Date

R.2003 d.110, effective February 7, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 4, The New Jersey Register of Historic Places Rules, expires on August 5, 2008. See: 40 N.J.R. 1428(a).

Chapter Historical Note

Chapter 4, New Jersey Register of Historic Places, was adopted by R.1979 d.328, effective August 16, 1979. See: 11 N.J.R. 224(c). Section 2.2 was amended by R.1980 d.241, effective June 4, 1980. See: 12 N.J.R. 108(a), 12 N.J.R. 391(b).

Pursuant to Executive Order No. 66(1978), Chapter 4, New Jersey Register of Historic Places, expired on August 16, 1992.

Chapter 4, Procedures Concerning the New Jersey Register of Historic Places, was adopted as R.1992 d.318, effective August 17, 1992. See: 23 N.J.R. 2103(b), 24 N.J.R. 2926(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Procedures Concerning the New Jersey Register of Historic Places, was readopted by R.1997 d.373, effective August 14, 1997. See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

Chapter 4, The New Jersey Register of Historic Places Rules, was readopted as R.2003 d.110, effective February 7, 2003. See: Source and Effective Date. See, also, section annotations.

Cross References

Historic Preservation Grants, see N.J.A.C. 7:4D.

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SUBCHAPTER 1. GENERAL PROVISIONS

7:4-1.1 Purpose

(a) This chapter shall constitute the rules of the Department of Environmental Protection concerning the preservation of the State's historic, architectural, archaeological, engineering, and cultural heritage in accordance with the New Jersey Register of Historic Places Act, N.J.S.A. 13:1B-15.128 et seq. This chapter contains rules on three distinct procedures administered by the Department through the Historic Preservation Office:

1. The nomination of historic sites to the New Jersey Register and the submission of historic sites to the National Register of Historic Places in a complementary process to

36 C.F.R. 60 which sets forth the Federal procedures for the National Register;

2. The procedures and criteria for evaluating the impact of public undertakings on historic properties listed in the New Jersey Register; and

3. A consultation process that may be used by other Department programs or non-Federal governmental agencies, in regard to identifying historic sites, assessing the potential effects of projects on such sites and recommending possible alternatives or mitigation for those effects.

Amended by R.1997 d.373, effective September 15, 1997.

See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

Amended by R.2003 d.110, effective March 17, 2003.

See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

Rewrote the section.

Law Review and Journal Commentaries

Remediating and redeveloping historic properties. 165 N.J.L.J. 102 (2001).

7:4-1.2 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

7:4-1.3 Definitions

The following words and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. However, if a term is also defined at N.J.A.C. 7:4-8.1, then that definition shall supersede the definition in this section for purposes of N.J.A.C. 7:4-8.

“Acquisition” means the act or process of acquiring fee title or interest other than fee title of real property (including the acquisition of development rights or remainder interest).

“Act” means the “New Jersey Register of Historic Places Act”, P.L. 1970, c.268, N.J.S.A. 13:1B-15.128 et seq., or subsequent amendments thereto.

“Area” means a district as defined in this section.

“Area of undertaking’s potential impact” means that geographical area within which direct and indirect effects generated by the undertaking as defined in this section, could reasonably be expected to occur.

“Building(s)” means a structure created to shelter any form of human activity. Examples include a single construction such as a house, barn, courthouse, city hall, social hall, commercial building, library, factory, mill, train depot, fort, residence, hotel, theater, school, store, or church, or a small group of buildings consisting of a main building and subsidiary buildings that are functionally and historically related such as a courthouse and jail, house and barn, mansion and

carriage house, church and rectory, or farm house and related out buildings, created to shelter any form of human activity.

“Certified Local Government” means a local government certified by the Department and the National Park Service to participate in Federal and State historic preservation programs pursuant to the National Historic Preservation Act of 1966 as amended.

“Chief elected local official” means the mayor, county executive or other titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

“Commissioner” means the Commissioner of the Department of Environmental Protection.

“Contributing property” means a building, site, structure, or object that adds to the historic architectural qualities, historic associations, or archaeological values for which a property is significant because:

1. It was present during the period of significance, and possesses historic integrity reflecting its character at that time or is capable of yielding important information about the period; or

2. It independently meets the New Jersey Register criteria set forth in N.J.A.C. 7:4-2.3.

“Cyclic maintenance” means that type of maintenance that is performed less frequently than annually and involves replacement or major mending of the fabric of a historic property, an example of which would be a complete re-roofing of a building.

“Damage” means partial physical harm or demolition of a historic property.

“Department” means the Department of Environmental Protection, Division of Parks and Forestry, Historic Preservation Office.

“District” means a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements that although linked by association or function were separated geographically during the period of significance, as a district of discontinuous archaeological sites or a canal system where man-made segments are interconnected by natural bodies of water. The concept of a discontinuous district applies only where visual continuity is not necessary to convey the historic interrelationship of a group of related resources. Examples include, but are not limited to, college campuses; central business districts; residential areas; commercial areas; industrial complexes; civic centers; rural villages; canal systems; collections of habitation and limited activity sites; irrigation systems; large estates, farms, ranches, or plantations; transportation networks; and large landscaped parks.

“Emergency” means a situation in which the condition of a property is so damaged by an event such as, but not limited to, a natural disaster, major fire, serious accident or structural collapse, that it constitutes an immediate, direct, demonstrable, and severe hazard to the public safety. The poor condition of a property caused by long term deterioration shall not be considered an emergency.

“Encroachment” means the adverse effect upon any district, site, building, structure or object included in the New Jersey Register resulting from the undertaking of a project by the State, a county, municipality or an agency or instrumentality thereof, as determined by application of the Criteria for Determining Whether an Undertaking Constitutes an Encroachment set forth in N.J.A.C. 7:4-7.2(e)4 and the Secretary of the Interior’s Standards for the Treatment of Historic Properties (36 C.F.R. 68) and “Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings” (guidelines issued by the National Park Service, incorporated herein by reference) and available from the Historic Preservation Office, PO Box 404, Trenton, New Jersey 08625-0404) or from the Historic Preservation Office website (www.state.nj.us/dep/hpo) or from the National Park Service website (www.nps.gov) or subsequent amendments thereto adopted by the Secretary of the United States Department of the Interior and the National Park Service.

“Historic Preservation Commission” means the commission created by an ordinance adopted by the local governing body pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-107 through 112.

“Historic Preservation Office” means that office of the Division of Parks and Forestry, Department of Environmental Protection, and any successors in right, with the responsibility for maintaining the New Jersey Register of Historic Places and administering the State Historic Preservation Program.

“Historic property” means any district, site, building, structure or object significant in American history, architecture, archaeology, engineering and culture.

“Historic Sites Council” means the body within the Division of Parks and Forestry, Department of Environmental Protection established by P.L. 1967, c.124, N.J.S.A. 13:1B-15.108 et seq., and amended by P.L. 1984, c.562, N.J.S.A. 13:1B-15.111 et seq., for the purpose of recommending policies to the Commissioner for the following actions: the acquisition, development, use, improvement and extension of historic sites (including archaeological sites); the development of a broad historic sites preservation program on a Statewide and local basis; the identification, authentication, protection, preservation, conservation, restoration, and management of all historic sites within the State; and the provision of advice on encroachments by the undertakings of State, county or municipal governments or any agency or instrumentality thereof on properties listed in the New Jersey Register.

“Housekeeping” means light cleaning performed at short term intervals.

“Local government” means a city, borough, town, municipality, township, village, county or other general purpose political subdivision of the State.

“Maintenance” means treatment that includes housekeeping, routine, and cyclic work scheduled to mitigate wear and deterioration of a historic property.

“Major revisions” means alteration of the boundaries of a property or important substantive changes to the nomination which could be expected to change the ultimate determination as to whether or not the property is listed in the New Jersey or National Registers.

“National Park Service” means that agency of the United States Department of the Interior to which the Secretary of the Interior has delegated the authority and responsibility for administering the National Register of Historic Places program, under the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 et seq.

“National Register” means the National Register of Historic Places, which consists of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering and culture, and which the Secretary of the United States Department of the Interior is authorized to expand and maintain pursuant to The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq.

“National Register Nomination Form” means the legal document and reference for historical, architectural and archaeological data upon which the registration of properties is founded. Said document is the National Park Service’s Form NPS 10-900, with accompanying continuation sheets (where necessary) or Form NPS 10-306 with continuation sheets (where necessary) now in use by the National Park Service and as may be subsequently modified, changed or amended.

“New Jersey Register” means the New Jersey Register of Historic Places, consisting of areas, sites, buildings, structures and objects within the State determined to have significant historical, archaeological, architectural, or cultural value, which the Commissioner is authorized to expand and maintain pursuant to the Act.

“Nominate” means to propose that a district, site, building, structure or object be listed in the New Jersey and National Registers by preparing a nomination application with accompanying maps and photographs, which clearly documents the significance of the property and is technically and professionally correct and sufficient in accordance with the procedure set forth in N.J.A.C. 7:4-2.2.

“Noncontributing property” means a building, site, structure, or object that does not add to the historic architectural qualities, historic associations, or archaeological values for which a property is significant because:

1. It was not present during the period of significance;
2. Due to alterations, disturbances, additions, or other changes, it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period; or
3. It does not independently meet the New Jersey Register criteria set forth in N.J.A.C. 7:4-2.3.

“Object(s)” means a construction that is primarily artistic in nature or is relatively small in scale and simply constructed, as distinguished from a building or a structure. Although it may be movable, by nature or design, an object is associated with a specific setting or environment, such as statuary in a designed landscape. Objects should be located in a setting appropriate to their significant historic use, roles, or character. Examples include, but are not limited to, sculpture, monuments, mileposts, boundary markers, statuary, and fountains. (Objects relocated in a museum setting are generally considered inappropriate for listing in the New Jersey Register.)

“Preservation” means the act or process of applying measures to sustain the existing form, integrity and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

“Project” means a planned undertaking.

“Reconstruction” means the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

“Rehabilitation” means the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

“Restoration” means the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

“Routine maintenance” means minor repairs such as in-kind replacement of a broken window pane or in-kind patching of a few roof shingles.

“Site(s)” means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historic or archaeological value regardless of the value of any existing structure. Examples include, but are not limited to, habitation sites, funerary sites, rock shelters, village sites, hunting and fishing sites, ceremonial sites, petroglyphs, rock carvings, battlefields, ruins of historic buildings and structures, campsites, ruins of industrial works, sites of treaty signings, trails, shipwrecks, cemeteries, designed landscapes, and natural features, and such as springs, rock formations, and landscapes which have cultural significance.

“State Historic Preservation Officer” means the Commissioner of the Department of Environmental Protection, who is designated by the Governor to administer the State Historic Preservation Program, including the identification and nomination of eligible properties to the National Register. The Commissioner is also authorized by the Act to establish criteria for receiving and processing nominations and approval of areas, sites, buildings, structures and objects, both publicly and privately owned, for inclusion in the New Jersey Register.

“State Historic Preservation Plan” means the National Park Service required document that sets forth long-range goals of the State Historic Preservation Program and describes specific ways for the community to achieve those goals.

“State Historic Preservation Program” means the program established by the Department and approved by the Secretary of the United States Department of the Interior for the purposes of carrying out the provisions of the National Historic Preservation of 1966, as amended, and related laws and regulations.

“State Review Board” means a body whose members represent the professional fields of American history, architectural history, prehistoric and historic archaeology, and other professional disciplines appointed by the State Historic Preservation Officer as part of the State Historic Preservation Program for the purpose of reviewing and recommending to the State Historic Preservation Officer whether to approve New Jersey and National Register nominations based on whether or not they meet the criteria for evaluation in N.J.A.C. 7:4-2.3.

“Structure(s)” is a term used to distinguish from buildings those functional constructions made usually for purposes other than creating shelter. Examples include, but are not limited to, bridges, tunnels, gold dredges, firetowers, canals, turbines, dams, power plants, corncribs, silos, roadways, shot towers, windmills, grain elevators, kilns, mounds, cairns, palisade fortifications, earthworks, railroad grades, systems of roadways and paths, boats and ships, railroad locomotives and cars, telescopes, carousels, and aircraft.

“Undertaking” means an action by the State, a county, municipality, or an agency or instrumentality thereof, which has the potential to result in direct or indirect effects on any district, site, building, structure or object listed in the New Jersey Register. An action shall be considered to have an effect whenever any condition of the action causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualified a historic property to meet the criteria for evaluation (N.J.A.C. 7:4-2.3) for the New Jersey Register. For the purpose of determining effect, alteration of features of the property’s location, setting or use may be considered relevant depending on a property’s significant characteristics. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same place and time. Indirect effects include those caused by the undertaking that are farther removed in distance or later in time, but are still reasonably foreseeable. Such indirect effects may include changes in the pattern of land use, population density or growth rate that may affect the quality of the historical, architectural, archaeological, or cultural characteristics that qualified a historic property to be listed in the New Jersey Register. Consistent with the above language, the following are examples of what shall be considered undertakings: acquisitions, sales, leases, transfers of deed, easements, an agreement or other form of permission allowing use of a registered property, cyclic maintenance, and alterations or relocation of a registered property. The following are examples of actions that shall not be considered as undertakings:

1. Changes in local zoning ordinances;
2. Issuance of building or demolition permits to private individuals or corporations;
3. Granting of zoning variances to private individuals or corporations; and
4. Housekeeping and routine maintenance.

Amended by R.1997 d.373, effective September 15, 1997.
See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

Added “Historic Preservation Office”; deleted “New Jersey and National Register Manual”, “Office of New Jersey Heritage”, “Protection”, and “Stabilization”; and amended “Department”, “District”, “Encroachment”, “Historic Sites Council”, “New Jersey Register”, “Noncontributing property”, “Preservation”, “Reconstruction”, “Rehabilitation”, “Restoration”, “State Historic Preservation Officer”, “State Historic Preservation Plan”, “Structure(s)”.

Amended by R.2003 d.110, effective March 17, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

Added a second sentence in the introductory paragraph; in “Encroachment”, amended the N.J.A.C. reference and inserted a reference to the website address; rewrote “State Historic Preservation Plan”.

SUBCHAPTER 2. REGISTRATION PROCEDURES AND CRITERIA

7:4-2.1 Integration of New Jersey and National Register of Historic Places Program

(a) The procedures for registration in New Jersey Register are integrated with the National Register of Historic

Places Program administered by the Department and the National Park Service. The New Jersey and National Registers both use the same nomination criteria, nomination forms, State administrative agency (Historic Preservation Office), and State Review Board. Both require that the Commissioner sign the nomination; in the case of the National Register, as the State Historic Preservation Officer. This integrated process is designed to avoid duplication of steps since the two programs parallel and complement each other. The dual process ends after the Commissioner signs a historic property’s nomination form, which action lists the historic property in the New Jersey Register. The property is then registered and protected by the Act. Once signed by the State Historic Preservation Officer, the historic property’s nomination form is then forwarded to the National Park Service in care of the Keeper of the National Register for consideration for inclusion in the National Register.

(b) The State Historic Preservation Officer is responsible for identifying and nominating eligible properties to the New Jersey and National Registers and establishing State-wide priorities for preparation and submittal of nominations to the New Jersey and National Registers in accordance with the State Historic Preservation Plan.

(c) The New Jersey Register is administered and maintained by the Department.

(d) The Commissioner, as the State Historic Preservation Officer, or the Commissioner’s designee, shall make the final determination for New Jersey registration. If favorable, the Commissioner shall sign the nomination, thereby placing the historic property on the New Jersey Register and simultaneously recommending the historic property for National Register designation by the National Park Service.

Amended by R.1997 d.373, effective September 15, 1997.
See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

7:4-2.2 Procedure for the nomination of properties for inclusion in the New Jersey and National Registers

(a) All applications for nomination to the New Jersey and National Registers shall be made under the supervision of the Department, on standard National Register Nomination Forms. Guidance in the completion of the forms is provided in the National Park Service publication “Guidelines for Completing National Register of Historic Places Forms” (National Register Bulletin Number 16) or subsequent amendments thereto and other guidelines issued by the Historic Preservation Office or the National Park Service for nominations to the National Register. The forms, publication, and guidelines are available from the Department at the Historic Preservation Office, PO Box 404, Trenton, New Jersey 08625-0404.

(b) Applications for nomination to the New Jersey Register may be initiated by private individuals, any organization, or government agency.

(c) The procedure for the nomination of property for inclusion in the New Jersey and National Registers is as follows:

1. The applicant obtains a preliminary questionnaire and an individual building or district survey form from the Department.

2. The applicant submits the following to the Department for a preliminary determination by the Department whether the property is potentially eligible for listing in the New Jersey and National Registers under the criteria for evaluation set forth in N.J.A.C. 7:4-2.3:

i. The completed preliminary questionnaire and the individual or district survey form obtained under (c)1 above; and

ii. Clear photographs that show the property in complete exterior and interior views. In the case of a district, the photographs shall show representative views of the district;

3. Within 45 days of receiving a complete submittal for preliminary determination under (c)2 above, the Department shall:

i. Make a preliminary determination of the property's potential eligibility for the New Jersey and National Registers; and

ii. Notify the applicant in writing whether or not the Department determines that the property is potentially eligible for the New Jersey and National Registers.

(1) If the Department determines that the property potentially is eligible for the New Jersey and National Registers, the Department shall send a National Register Nomination Form to the applicant.

(2) If the Department determines that the property does not appear to be potentially eligible for the New Jersey and National Registers, the Department shall give the applicant a written explanation of the Department's preliminary determination that the property does not appear to meet the criteria for evaluation in N.J.A.C. 7:4-2.3. If the applicant intends to proceed with the application, the applicant shall notify the Department in writing of his intent to proceed within 90 days of the Department's issuance of a preliminary determination that the property does not appear to meet the criteria for evaluation. If a response from the applicant is not received within 90 days, the Department shall return the preliminary submittal to the applicant. If a response from the applicant is received within 90 days, the Department shall forward a National Register Nomination Form to the applicant. If the applicant resubmits a request for a preliminary determination, it shall be treated as a new preliminary submittal.

4. The applicant shall, as part of an adequately documented and technically and professionally correct and sufficient National Register Nomination Form, submit to the Department a complete list of all owners of the nominated property as of the date of the National Register Nomination Form's submission. The list of property owners shall be the list of private and public property owners (including right-of-way owners) named in official municipal tax records and maps and shall be notarized by the appropriate municipal official. If the property is not scheduled for consideration by the State Review Board under this subchapter within 90 days after the Department receives an adequately documented and technically and professionally correct and sufficient National Register Nomination Form, the Department may require that the applicant submit an updated list of property owners (notarized by the appropriate municipal official) which the applicant shall provide to the Department within 30 days of the issuance of the Department's written request.

5. Within 60 days of receiving a completed National Register Nomination Form, the Department shall notify the applicant in writing as to:

i. Whether or not the National Register Nomination Form is adequately documented and technically and professionally correct and sufficient;

ii. Whether or not the property appears to meet the criteria for evaluation in N.J.A.C. 7:4-2.3; and

iii. If the Department determines that the National Register Nomination Form is adequately documented and technically and professionally correct and sufficient and that the property appears to meet the criteria for evaluation in N.J.A.C. 7:4-2.3, the Department shall schedule the nomination for consideration at the earliest possible State Review Board meeting, consistent with the Department's established priorities for processing nominations. These priorities shall be consistent with implementation of the State Historic Preservation Plan and shall be established by the Department in consultation with the State Review Board. The Department shall notify the applicant in writing of the property's position in accordance with the Department's priorities for processing nominations under the State Historic Preservation Plan and of the approximate date the applicant can expect the nomination of the property to be considered by the State Review Board under this subchapter. If the nomination can be considered by the State Review Board at least 60 days but not more than 75 days after notification, the notice may specify a date when the nomination will be considered by the State Review Board; or

iv. If the Department determines that the National Register Nomination Form is not adequately documented and technically and professionally correct and sufficient or that the property does not appear to meet the criteria for evaluation in N.J.A.C. 7:4-2.3, the Department shall provide the applicant with a written explanation of the reasons for that determination.

6. If the Department determines that the National Register Nomination Form is not adequately documented and technically and professionally correct and sufficient, the applicant shall have 90 days from the date of issuance of the written notice under (c)4iv above to submit to the Department the additional documentation or information necessary to correct the deficiencies identified in the notice. If the Department does not receive the additional documentation or information necessary to correct the deficiencies identified in the notice within 90 days as above provided, the Department shall return the nomination to the applicant. If the Department determines that the additional documentation or information submitted by the applicant to correct the deficiencies identified on the notice substantially revises the original National Register Nomination Form, the Department may reprocess the nomination as a new submittal under this section.

7. If the Department determines that the National Register Nomination Form is adequately documented and technically and professionally correct and sufficient, but that the property does not appear to meet the criteria for evaluation in N.J.A.C. 7:4-2.3, the Department need not process the nomination further unless the Department receives a written request to do so from the Keeper of the National Register under 36 CFR Part 60, Section 60.12 referenced in N.J.A.C. 7:4-2.2(c)21 below, in which case the Department shall proceed with processing the nomination for the National Register but shall not be required to process the nomination for the New Jersey Register.

8. When a National Register Nomination Form for a property within the jurisdiction of a Certified Local Government is received by the Department, the Department shall:

i. Forward a copy of the nomination to the Certified Local Government's historic preservation commission for the commission's review and comment;

ii. Within 30 days of its receipt of the nomination, forward to the Certified Local Government's historic preservation commission a written determination on whether or not the nomination is adequately documented and technically and professionally correct and sufficient and whether the nominated property appears to meet the criteria for evaluation under N.J.A.C. 7:4-2.3;

iii. Allow the Certified Local Government 60 days from the date of issuance of the notice of adequate documentation and eligibility for the Chief Elected Local Official of the Certified Local Government to transmit to the Department a report by the historic preservation commission as to whether or not in its opinion the nominated property meets the criteria for evaluation in N.J.A.C. 7:4-2.3 and the recommendation of the chief elected local official;

iv. If the report by the Certified Local Government's historic preservation commission and the recommendations of its chief elected local official are not

received by the Department within 60 days as provided in (c)8ii above, the Department shall proceed with processing the nomination pursuant to this chapter; and

v. If both the Certified Local Government's historic preservation commission and its chief elected local official recommend under (c)8ii above that a property not be listed in the National Register, the Department shall not proceed with processing the nomination for the National Register pursuant to this chapter unless, within 30 days of the receipt of the recommendation by the Department, the State Historic Preservation Officer receives a written request from any citizen or organization to proceed with the nomination. The report by the Certified Local Government's historic preservation commission and the recommendations of its chief elected local official shall be included by the Department with any nomination processed by the Department under this chapter and submitted by the State Historic Preservation Officer to the Keeper of the National Register.

9. As part of the nomination process, the Department shall notify the applicant and the owner(s) of the nominated property or the owner(s) of property within a nominated historic district in writing of the Department's intent to bring the nomination before the State Review Board on a specific date, time and place. The Department shall be responsible for notifying only those property owners named in the National Register Nomination Form in accordance with (c)4 above. Where more than one owner is named, each separate owner shall be notified. The Department shall send the written notification via certified mail at least 60 but not more than 75 days before the State Review Board meeting during which the nomination is scheduled to be considered. In addition to informing the applicant and owner(s) that the property is being considered for nomination to the New Jersey Register, the notice shall solicit written comments on the significance of the property and whether or not it meets the criteria for evaluation set forth in N.J.A.C. 7:4-2.3, inform the owners what registration of the property will mean to the owner, and explain the benefits and responsibilities of property registration. The property owner(s) shall have at least 60 days but not more than 75 days from the date of issuance of written notification to submit written comments to the Department and to concur in or object to the nomination of such property. For a nomination with more than 50 property owners, the Department may publish a public notice to property owners concerning the Department's intent to nominate instead of individually notifying all property owners. Such public notice shall be published at least 60 days but not more than 75 days before the State Review Board meeting during which the nomination is scheduled to be considered. Such public notice must be published in one or more local newspapers of general circulation in the area of the nomination.

10. At least 60 but not more than 75 days before the State Review Board meeting during which the nomination is scheduled to be considered, the Department shall send, via certified mail, to the applicable chief elected local official of the county and municipality in which the property is located written notice of the Department's intent to bring the nomination before the State Review Board on a specific date, time and place. Notifications of a proposed district shall include a map showing the district boundaries. In addition to informing the chief elected local official that the property is being considered for nomination to the New Jersey Register, the notice shall solicit written comments on the significance of the property and whether or not it meets the criteria for evaluation in N.J.A.C. 7:4-2.3. The chief elected local official shall have 60 but not more than 75 days from the date of issuance of written notification to submit written comments on the nomination to the Department.

11. The complete National Register Nomination Form shall be on file with the Department during the comment period in (c)9 and 10 above and a copy shall be made available by mail when requested by the public or made available at a location to which all affected property owners have reasonable access, such as a local library, municipal building, courthouse, or other public place so that written comments regarding the nomination can be prepared.

12. In the case of a nomination of an historic district including 50 or more property owners, the Department shall conduct a public meeting in the municipality in which the property is located prior to consideration of the application by the State Review Board. In the event of an archaeological nomination, the public meeting may be waived by the Department. The Department shall send written notice of the meeting to property owners within the proposed historic district a least 30 days prior to the date of the meeting. The Department shall be responsible for notifying only those property owners within the proposed historic district named in the National Register Nomination Form in accordance with (c)4 above. The notification shall provide the following: a description of the proposed historic district, the benefits and responsibilities of historic district registration, the place that the nomination document can be examined prior to the meeting, and the date, time and place that the meeting will be held. Alternative methods of notification for the meeting such as publication in the official newspaper of the municipality, or in a newspaper circulating in the municipality may be used when the number of property owners in a proposed historic district exceeds 50.

13. Upon notification under (c)9 above, any owner or owners of a private property who objects to the nomination to the National Register shall submit to the Department a notarized statement certifying that the objector is the sole or partial owner of the private property and objects to the nomination. Upon receipt of notarized objections respecting a district or single private property with multiple owners, the Department shall ascertain how many owners have objected. If an owner whose name did not appear on the ownership list submits a written notarized statement from the municipality that the party is the sole or partial owner of a nominated private property, such owner shall be counted by the Department in determining how many owners have objected. Each owner of private property in a district shall be considered only once regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of district. Owner objections shall be considered by the State Historic Preservation Officer only with regard to submission of the nomination to the Keeper of the National Register of Historic Places.

14. Completed National Register Nomination Forms, Department recommendations, and public comments concerning the significance of a property and its eligibility for the New Jersey and National Registers shall be submitted by the Department to the State Review Board. The State Review Board shall review the nomination forms and comments concerning the property's significance and eligibility for the New Jersey Register. The State Review Board shall evaluate whether or not the property meets the criteria for evaluation set forth in N.J.A.C. 7:4-2.3 and make a recommendation to the State Historic Preservation Officer to approve or disapprove the nomination. The State Review Board may request that the applicant submit additional information before making a recommendation to the State Historic Preservation Officer. If a nomination is not recommended for approval by the State Review Board, the Board shall explain at the meeting the reasons for its determination that the property does not satisfy the criteria for evaluation set forth in N.J.A.C. 7:4-2.3. The Board's explanation shall be made a part of the minutes of the meeting.

15. Nominations approved by the State Review Board, along with any comments received, shall be reviewed by the State Historic Preservation Officer. If the State Historic Preservation Officer determines that a nomination is adequately documented and technically, professionally, and procedurally correct and sufficient and in conformance with the criteria for evaluation set forth in N.J.A.C. 7:4-2.3, the State Historic Preservation Officer shall, within 90 days of the State Review Board meeting, sign the National Register Nomination Form and thereby place the property on the New Jersey Register and simultaneously recommend the nomination to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. All comments received by the Department and notarized statements of objection to listing received by the Department shall be submitted to the National Park Service along with the nomination. Historic properties placed on the New Jersey Register shall remain on the New Jersey Register regardless of the response of the National Park Service to the nomination to the National Register. The State Historic Preservation Officer's signature certifies that:

- i. All procedural requirements set forth in this section have been met;
- ii. The National Register Nomination Form is adequately documented;
- iii. The National Register Nomination Form is technically and professionally correct and sufficient; and
- iv. In the opinion of the State Historic Preservation Officer, the property meets the criteria for evaluation set forth in N.J.A.C. 7:4-2.3.

16. If the State Historic Preservation Officer determines that the nominated property does not meet the criteria for evaluation set forth in N.J.A.C. 7:4-2.3, the State Historic Preservation Officer shall, within 45 days of the State Review Board meeting, advise the applicant in writing of the reasons for the determination. In the event that the State Historic Preservation Officer determines that the nominated property does not meet the criteria for evaluation, the State Historic Preservation Officer need not sign the National Register Nomination Form.

17. If the State Historic Preservation Officer and the State Review Board disagree on whether a property meets the criteria for evaluation set forth in N.J.A.C. 7:4-2.3, the State Historic Preservation Officer, if he or she chooses, may submit the nomination, with an opinion concerning whether or not the property meets the criteria for evaluation and the opinion of the State Review Board, to the Keeper of the National Register for a final decision on the listing of the property in the National Register. The State Historic Preservation Officer shall submit such disputed nominations to the Keeper within 45 days after the recommendation by the State Review Board if so requested by the State Review Board, the chief elected

official of the municipality in which the property is located, or by the Keeper of the National Register pursuant to federal rules for appeals under the National Register Program set forth in 36 CFR Part 60, Section 60.12 or subsequent amendments thereto.

18. If the owner of a nominated private property or the majority of such owners of a nominated historic district or single property with multiple owners has objected to the nomination to the National Register by notarized statements before the State Historic Preservation Officer submits the nomination to the Keeper, the State Historic Preservation Officer shall sign the National Register Nomination Form, but shall submit the nomination to the Keeper only for a determination of whether the property or historic district is eligible for the National Register pursuant to the federal rules for the National Register Program set forth in 36 CFR Part 60, section 60.6(n) and (s) or subsequent amendments thereto.

19. Nominations will be included in the National Register within 45 days of receipt by the Keeper of a completed National Register Nomination Form from the State Historic Preservation Officer unless:

- i. The Keeper returns the nomination to the State Historic Preservation Officer because the National Register Nomination Form is not adequately documented and technically and professionally correct and sufficient;
- ii. The Keeper returns the nomination to the State Historic Preservation Officer because the Keeper has determined that the nominated property or historic district does not meet the criteria for listing in the National Register set forth in 36 CFR Part 60, section 60.4 or subsequent amendments thereto;
- iii. An appeal is filed with the Keeper as provided in (c)22 below; or
- iv. The owner of the nominated private property or the majority of the owners of property in a nominated historic district or single property with multiple owners objects by notarized statements received by the Keeper before the property or historic area is listed on the National Register.

20. When a nomination is returned to the State Historic Preservation Officer as provided in (c)19i and ii above, the State Historic Preservation Officer shall notify the applicant that the nomination has been returned. The notification shall include an explanation of the reasons for the return of the nomination. Upon receipt by the State Historic Preservation Officer of sufficient additional information from the applicant addressing the reasons for the return of the nomination, the State Historic Preservation Officer shall resubmit the nomination to the Keeper.

21. Any person or organization which supports or opposes the nomination of a property by the State Histor-

ic Preservation Officer for listing in the National Register may, during the review of the nomination by the National Park Service, petition the Keeper to accept or reject a nomination pursuant to the federal rules for appeals under the National Register Program, 36 CFR Part 60, Section 60.6(t) or subsequent amendments thereto. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petitions received by the Keeper prior to the listing of the property in the National Register or a determination of its eligibility where the private owners object to listing will be considered by the Keeper and the nomination will be substantively reviewed. Decisions by the Keeper on such petitions shall not affect a property's listing in the New Jersey Register.

22. If the Department determines not to nominate a property for inclusion in the National Register or the State Historic Preservation Officer does not nominate a property recommended by the State Review Board for inclusion in the National Register, any person or local government may appeal to the Keeper the failure or refusal of the State Historic Preservation Officer to nominate a property to the National Register that the person or local government considers to meet the criteria for listing in the National Register set forth in 36 C.F.R. 60.4 or subsequent amendments thereto. Such appeals shall be made in accordance with Federal rules for appeals under the National Register Program (36 C.F.R. 60.12) or subsequent amendments thereto. Regardless of the decision by the Keeper, the State Historic Preservation Officer is not obligated to place the property on the New Jersey Register.

23. If subsequent to nomination of a property for listing in the New Jersey Register and National Registers, major revisions are made to the nomination or a property previously rejected by the Department or Keeper is renominated, the State Historic Preservation Officer shall notify the affected property owner(s) and the chief elected local official of the county and municipality in which the property is located of the revisions or renomination in the same manner as the original notification for the nomination under (c)9 and 10 above. In the case of major revisions, the Department may resubmit the nomination to the State Review Board or treat it as a new nomination to be processed in accordance with this section. Comments received and notarized statements of objection shall be forwarded to the Keeper along with the revisions or renomination. The State Historic Preservation Officer shall also certify by the resubmittal that the affected property owner(s) and the chief elected local officials have been renotified.

Amended by R.1997 d.373, effective September 15, 1997.

See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

Amended by R.2003 d.110, effective March 17, 2003.

See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

Substituted "60 days" for "30 days" preceding "but not more than 75 days" throughout; in (c), inserted "via certified mail" in the third sentence of 9 and the first sentence of 10.

7:4-2.3 Criteria for evaluation of a property nominated for listing in the New Jersey Register

(a) The criteria for evaluation listed below shall be used by the Department, State Review Board, and State Historic Preservation Officer to determine the eligibility of a property for listing in the New Jersey Register. The criteria for evaluation are also used by the National Park Service for determining eligibility of properties for the National Register (36 C.F.R. 60.4) or subsequent amendments thereto. These criteria are worded to apply to a wide diversity of properties. The criteria for evaluation are listed by letter as published in the Federal rules and as commonly utilized.

1. Criteria for Evaluation: The quality of significance in American history, architecture, archaeology, engineering and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and:

i. (Criterion A) That are associated with events that have made a significant contribution to the broad patterns of our history; or

ii. (Criterion B) That are associated with the lives of persons significant in our past; or

iii. (Criterion C) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

iv. (Criterion D) That have yielded, or may be likely to yield, information important in prehistory or history.

2. Criteria considerations: Ordinarily cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years are generally not considered eligible for the New Jersey Register. However, such properties may qualify if they are integral parts of areas that do meet the criteria or if they fall within the following categories:

i. A religious property deriving primary significance from architectural or artistic distinction or historic importance;

ii. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with an historic person or event;

iii. A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his or her productive life;

iv. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

v. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;

vi. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

vii. A property achieving significance within the past 50 years if it is of exceptional importance.

(b) The criteria for evaluation set forth in (a) above shall be applied in accordance with the guidelines issued by the National Park Service from time to time in the following or similar documents: "How to Apply the National Register Criteria for Evaluation" (National Register Bulletin No. 15), and "Guidelines for Completing National Register of Historic Places Forms" (National Register Bulletin Number 16) or subsequent amendments thereto, incorporated herein by reference and available from the Historic Preservation Office, PO Box 404, Trenton, New Jersey 08625-0404 or from the website (www.state.nj.us/dep/hpo) or the National Park Service website (www.nps.gov).

Amended by R.1997 d.373, effective September 15, 1997.
See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

Inserted new (a)2iii; recodified former (a)2iii through vi as (a)2iv through vii; in (b), deleted reference to New Jersey and National Register Manual, inserted reference to Bulletin No. 15, and amended Office reference.

Amended by R.2003 d.110, effective March 17, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

In (b), added references to the website address.

7:4-2.4 Notification of registration and National Park Service determinations of eligibility

(a) Upon approval by the State Historic Preservation Officer of a property for listing in the New Jersey Register, all property owners named in the National Register Nomination Form in accordance with N.J.A.C. 7:4-2.2(c)4 shall receive from the Department written notification of the registration including the date of approval. Notification shall also be sent to the chief elected local official of the county and municipality in which the property is located and, if the property is located within the jurisdiction of a Certified Local Government, to the Historic Preservation

Commission. Alternative methods of notification, such as publication in the official newspaper of the municipality, or in a newspaper circulating in the municipality, may be used when the number of property owners in a proposed historic area exceeds 50. Notification of all registrations in counties under the jurisdiction of the Pinelands Commission shall also be sent to the Pinelands Commission.

(b) Upon approval by the Keeper of a property for listing in the National Register, the State Historic Preservation Officer shall send written notification of the registration to the property owners and the chief elected local official of the county and the municipality in which the property is located and, if the property is located within the jurisdiction of a Certified Local Government, to the Historic Preservation Commission. Alternative methods of notification, such as publication in the official newspaper of the municipality, or in a newspaper circulating in the municipality, may be used when the number of property owners in a proposed historic area exceeds 50.

(c) In the case of nominations where the owner of private property or the majority of such owners for an area or a single property with multiple owners has objected to listing in the National Register and the Keeper has determined the property or area to be eligible for the National Register, the State Historic Preservation Officer shall send written notification of the determination of eligibility to the property owners and the chief elected local official of the county and the municipality in which the property is located and, if the property is located within the jurisdiction of a Certified Local Government, to the Historic Preservation Commission. Alternative methods of notification, such as publication in the official newspaper of the municipality, or in a newspaper circulating in the municipality, may be used when the number of property owners in a proposed historic area exceeds 50.

7:4-2.5 Listed property file

Documentation of properties approved for listing in the New Jersey Register shall be on file and, subject to the provisions of N.J.A.C. 7:4-2.7, shall be available for public inspection at the Department.

7:4-2.6 Distribution of New Jersey Register and National Register

The Department shall maintain an updated list of sites on the New Jersey Register and National Register and distribute a copy of the New Jersey Register and National Register to the clerk of each county and municipality and to all New Jersey State Government agencies, instrumentalities, or entities upon request.

Amended by R.2003 d.110, effective March 17, 2003.

See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).
Rewrote the section.

7:4-2.7 Disclosure of nomination or registration of a historic property

The State Historic Preservation Officer need not make available to any person or entity except a Federal or State agency planning a project, the property owner, the chief elected local official of the county or municipality in which the property or district is located and the local Historic Preservation Commission for Certified Local Governments of the municipality in which the property is located, specific information relating to the location of properties proposed to be registered, or already registered in the New Jersey or National Registers, if the State Historic Preservation Officer determines that the disclosure of specific information would create a risk of destruction or harm to such properties.

SUBCHAPTER 3. BOUNDARY REDELINEATION AND RELOCATION OF PROPERTIES LISTED IN THE NEW JERSEY REGISTER

7:4-3.1 Redelineation of the boundary of property listed in the New Jersey Register

(a) The boundary of a property listed in the New Jersey Register may be redelineated only if:

1. Property that meets the criteria for evaluation in N.J.A.C. 7:4-2.3 was not included in the registered property or property that does not meet the criteria for evaluation in N.J.A.C. 7:4-2.3 was included in the registered property as the result of professional error in the original nomination of the registered property for listing in the New Jersey Register;

2. Property comprising part of registered property no longer meets the criteria for evaluation in N.J.A.C. 7:4-2.3 because the integrity of the qualities that caused the property to be listed in the New Jersey Register has been lost;

3. The property possesses additional, previously unrecognized significance in American history, architecture, archaeology, engineering or culture which causes the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3;

4. Additional research documents that a larger or smaller area of the registered property should be listed; or

5. Original delineation is inadequate to determine boundary limits.

(b) Except for redelineations under (a)5 above, the redelineation of the boundary of property listed in the New Jersey Register shall be considered a new nomination of a property to the New Jersey Register. A new National Register Nomination Form shall be prepared and submitted to the Department and processed by the Department in accordance with the procedure for the nomination of properties for inclusion in the New Jersey and National Registers set forth in N.J.A.C. 7:4-2.2. Any proposal to alter a boundary shall be documented in detail, including photographs of the historic resources located between the existing boundary and the proposed boundary. In the case of a proposed enlargement of the boundary of a registered property, only those property owners in the new area proposed to be included as part of a registered property shall be notified and counted in determining whether a majority of private property owners object to National Register listing as provided in N.J.A.C. 7:4-2.2(c)13. In the case of a proposed diminution of a boundary of a registered property, all owners of the registered property shall be notified and counted in determining whether a majority of private property owners object to the removal of part of a registered property from the National Register as provided in N.J.A.C. 7:4-2.2(c)13. If the State Historic Preservation Officer signs the National Register Nomination Form in accordance with N.J.A.C. 7:4-2.2(c)15, the revised boundaries of the registered property shall thereby be listed in the New Jersey Register and simultaneously recommended to the Keeper of the National Register. If the National Register Nomination Form is not signed by the State Historic Preservation Officer, the boundaries of the registered property shall not be changed.

(c) For redelineations under (a)5 above, an attachment to the National Register Nomination Form shall be prepared and submitted to the Department. The submission shall include a verbal boundary description, maps, and boundary justification. The Department shall process the redelineation in accordance with N.J.A.C. 7:4-2.2.

7:4-3.2 Relocation of properties listed in the New Jersey Register

(a) The Department encourages the relocation of properties on the New Jersey Register only when relocation is the only feasible means for preservation of the registered property. When a registered property is relocated every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(b) If the State, a county, municipality or any agency or instrumentality thereof proposes to relocate a property listed in the New Jersey Register, the State, county, municipality or agency or instrumentality thereof shall submit an application to the Department for project authorization for projects encroaching upon property listed in the New Jersey Register. The application shall be prepared, submitted and reviewed in accordance with the review procedures for projects encroaching upon property listed in the New Jersey Register set forth in N.J.A.C. 7:4-7.

(c) In order for a property listed in the New Jersey Register to be relocated and remain listed in the New Jersey Register during and after the relocation, the applicant shall submit documentation to the Department and obtain the approval thereof by the State Historic Preservation Officer prior to the relocation. The documentation shall set forth in detail:

1. The reasons for the relocation;
2. The effect of the relocation on the registered property's historical integrity which causes the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3;
3. The description of the new setting and general environment of the proposed site, including evidence that:
 - i. The proposed site does not possess historical or archaeological significance that would be adversely affected by the proposed relocation; and
 - ii. The proposed site will, to the maximum extent possible, contribute to reestablishing the registered property's previous historic orientation, immediate setting, and general environment; and
4. Photographs showing the proposed location.

(d) Documentation submitted to the Department under (c) above shall be processed by the Department in accordance with the procedure for the nomination of properties for inclusion in the New Jersey and National Registers set forth in N.J.A.C. 7:4-2.2.

(e) If the State Historic Preservation Officer approves continued listing of the property despite its relocation, the property shall remain in the New Jersey Register during and after the relocation unless the historic integrity which causes the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3 is in some unforeseen manner destroyed during or as a result of the relocation. Within 90 days after the registered property has been relocated, an applicant shall submit to the Department:

1. A letter notifying the State Historic Preservation Officer of the date that the registered property was relocated;
2. Photographs of the registered property on its new site;
3. A revised map of the new site including a United States Geological Survey map; and
4. The acreage and a verbal boundary description of the new site.

(f) The State Historic Preservation Officer shall respond to a complete and properly documented submittal under (e) above within 45 days of receipt with a final determination on whether the relocation has destroyed the historic integrity of the registered property which caused the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3. If the

State Historic Preservation Officer makes such a determination, the property shall be deleted from the New Jersey Register as of the date of the relocation of the property. In cases of properties removed from the New Jersey Register, if the applicant has neglected to obtain prior approval for the move or has evidence that previously unrecognized significance exists, or has accrued, the applicant may submit a new National Register Nomination Form for the property.

(g) If a registered property is relocated without first obtaining approval for continued listing from the State Historic Preservation Officer as provided in (e) above, the property shall, as of the date of relocation, be deleted from the New Jersey Register. However, a property which is subject to the encroachment review process set forth in N.J.A.C. 7:4-7 shall not be automatically deleted from the New Jersey Register until said review process is completed. If a registered property is relocated without first obtaining the approval required under (b) or (e) above, it is the responsibility of the property owner or applicant to notify the Department.

(h) If a property is deleted from the New Jersey Register under (g) above, in order for the property to be reentered in the New Jersey Register, a new National Register Nomination Form shall be prepared and submitted to the Department and processed by the Department in accordance with the procedure for nomination of properties for inclusion in the New Jersey and National Registers set forth in N.J.A.C. 7:4-2.2. In addition to the information required as part of a complete National Register Nomination Form under N.J.A.C. 7:4-2.2, the nomination form shall set forth in detail:

1. The reasons for the relocation;
2. The effect of the relocation on the property's historical integrity which caused the property to meet the criteria for evaluation in N.J.A.C. 7:4-2.3;
3. The new setting and general environment, including evidence that the new site does not possess historical or archaeological significance that would be affected by intrusion of the property;
4. Photographs showing the new site;
5. A United States Geological Survey Map showing the property at the new site; and
6. The acreage and a verbal boundary description of the new site.

7:4-3.3 Properties relocated in accordance with the recommendations of the Advisory Council on Historic Preservation

Properties relocated in accordance with the recommendations of the Advisory Council on Historic Preservation under 36 C.F.R. 800, are exempt from N.J.A.C. 7:4-3.2(c) through (h). An applicant shall notify the Department of the new site after the property has been relocated. The notice

shall include the information and documentation required in N.J.A.C. 7:4-3.2(e).

Amended by R.2003 d.110, effective March 17, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

7:4-3.4 Relocation by the State, a county or municipality of property listed in the New Jersey Register

(a) When the relocation by the State, a county, municipality or agency or instrumentality thereof of property listed in the New Jersey Register is authorized by the Commissioner in accordance with the procedures in N.J.A.C. 7:4-7 for project authorization of projects encroaching upon property listed in the New Jersey Register, the authorization exempts the registered property from N.J.A.C. 7:4-3.2(c) through (h).

(b) When the relocation by the State, a county, municipality or agency or instrumentality thereof of property listed in the New Jersey Register is authorized by the Commissioner in accordance with the provisions in N.J.A.C. 7:4-7 for project authorization for projects encroaching upon property listed in the New Jersey Register, the authorization does not exempt the registered property from N.J.A.C. 7:4-3.2(c) through (h) for the purpose of the property remaining in the National Register. In order for the property to remain in the National Register, an applicant shall comply with the procedures and obtain the determination required under N.J.A.C. 7:4-3.2(c) through (h).

(c) Under (a) and (b) above, an applicant shall notify the Department of the new site after the relocation. The notice shall include the information and documentation required under N.J.A.C. 7:4-3.2(e).

SUBCHAPTER 4. REMOVAL OF PROPERTY FROM THE NEW JERSEY REGISTER

7:4-4.1 Grounds for removal of property from the New Jersey Register

(a) A property listed in the New Jersey Register may be removed from the New Jersey Register only when the State Historic Preservation Officer determines that a petition for removal filed under (d) below establishes any of the following grounds:

1. The property has ceased to meet the criteria for evaluation in N.J.A.C. 7:4-2.3 because the qualities which caused the property to be listed in the New Jersey Register have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing in the New Jersey Register;

2. Additional information establishes that the property does not meet the criteria for evaluation in N.J.A.C. 7:4-2.3;

3. Any error in professional judgment occurred in determining that the property meets the criteria for evaluation in N.J.A.C. 7:4-2.3; or

4. Prejudicial procedural error occurred in the nomination or listing process.

(b) Property removed from the New Jersey Register on the grounds set forth in (a)4 above shall be reconsidered for listing by the State Historic Preservation Officer after correction of the procedural error or errors by the applicant or Department, as appropriate. The reconsideration shall be conducted in accordance with N.J.A.C. 7:4-2.2, 2.3 and 2.5. Any property removed from the New Jersey Register for procedural deficiencies in the nomination and/or listing process shall automatically be considered eligible for inclusion in the New Jersey Register.

(c) Property listed in the New Jersey Register five years prior to August 17, 1992 shall only be removed from the New Jersey Register on the grounds set forth in (a)1 above.

(d) Any person, organization or governmental agency may petition the Department in writing for removal of a property from the New Jersey Register. The petition shall fully document, describe and explain the reasons why the petitioner believes that the property should be removed from the New Jersey Register for any of the grounds set forth in (a) above. If the petition is based on the grounds set forth in (a)1 above, the petition shall include:

1. A copy of the original nomination indicating by number the significant elements that have lost integrity;

2. A narrative description and analysis clearly demonstrating loss of integrity and the reasons for that loss such as vandalism, demolition, destruction, relocation and alterations. In the case of a district, the description shall specifically identify properties affected by loss of integrity; and

3. Photographs showing existing conditions and keyed to a map and the nomination form.

(e) The State Historic Preservation Officer shall respond to the petitioner in writing within 45 days of receipt of the petition for removal of a property from the New Jersey Register. The response shall advise the petitioner of the State Historic Preservation Officer's views on the petition. A petitioner desiring to pursue his or her removal request shall notify the State Historic Preservation Officer in writing within 45 days of receipt of the written views on the petition. A property shall be considered for removal according to the nomination application procedure in N.J.A.C. 7:4-2.2 except that:

1. The procedures in N.J.A.C. 4-2.2(c)4, 14, 15 and 16 shall be completed in 15 days; and

2. The State Historic Preservation Officer shall forward the removal petition to the Keeper of the National Register within 15 days of the date of the meeting at which the State Review Board considered the petition.

SUBCHAPTER 5. CERTIFICATION OF ELIGIBILITY FOR LISTING IN THE NEW JERSEY REGISTER

7:4-5.1 Certification of eligibility for listing in the New Jersey Register

If the property for which a historic preservation grant is requested under the Garden State Preservation Trust Fund Act, N.J.S.A. 13:8C-1 et seq., is not listed on the New Jersey Register, the applicant shall, prior to submission of a historic preservation grant application under N.J.A.C. 15:34, obtain from the State Historic Preservation Officer a certification of eligibility stating that the property for which a grant is requested is eligible for listing in the New Jersey Register. An applicant for an historic preservation grant for property within a registered district which is not categorized on the National Register Nomination Form as either contributing or noncontributing to the character of the district shall apply to the Department for a certification of eligibility.

Amended by R.2003 d.110, effective March 17, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

Amended the N.J.S.A. and N.J.A.C. references.

7:4-5.2 Criteria for issuance of a certification of eligibility

In determining whether to issue a certification of eligibility, the Department shall apply the criteria of evaluation set forth in N.J.A.C. 7:4-2.3.

7:4-5.3 Application for certification of eligibility

(a) To apply for a certification of eligibility for listing in the New Jersey Register, the applicant for an historic preservation grant shall:

1. Obtain a preliminary questionnaire and individual survey form from the Department;
2. Submit the following to the Department for a determination by the State Historic Preservation Officer whether the property is eligible for listing in the New Jersey Register.
 - i. The completed preliminary questionnaire and individual survey form;
 - ii. Clear photographs that show the property in complete exterior and interior views; and
 - iii. A letter signed by the chief elected local official of the applying county or municipality, a letter signed by the chief executive officer of the applying nonprofit organization, or a letter signed by the head of the

applying State agency confirming the intent of the State, county, municipality, or nonprofit organization to apply for a historic preservation grant for the property.

3. If a property within a district listed in the New Jersey Register is not described on the National Register Nomination Form as being contributing or noncontributing to the character of the district, the application shall describe on the individual survey form how the property contributes to the character of the district.

4. If, based on its review of the preliminary questionnaire, individual survey form and photographs submitted under (a)2 above, the Department determines that a property may be eligible for listing in the New Jersey Register as part of a district, the Department shall provide the applicant with a district survey form. The applicant shall complete the district survey form within 90 days of the Department's issuance of the form and submit it to the Department with photographs that show representative views of the district.

(b) Within 45 days after receipt by the Department of a complete application for a certification of eligibility under (a) above, the State Historic Preservation Officer shall:

1. Determine whether the property is eligible for listing in the New Jersey Register under the Criteria for Evaluation set forth in N.J.A.C. 7:4-2.3; and
2. Notify the applicant in writing whether or not the State Historic Preservation Officer has determined that the property is eligible for listing in the New Jersey Register.

i. If the State Historic Preservation Officer has determined that the property is eligible for listing in the New Jersey Register, the State Historic Preservation Officer shall send a certification of eligibility, which shall specify how the property meets the criteria for eligibility set forth in N.J.A.C. 7:4-2.3 to the applicant.

ii. If the State Historic Preservation Officer has determined that the property is not eligible for listing in the New Jersey State Register, the State Historic Preservation Officer shall give the applicant a written explanation of the State Historic Preservation Officer's determination that the property does not meet the criteria for evaluation in N.J.A.C. 7:4-2.3.

(c) If the State Historic Preservation Officer has determined that the property is not eligible for listing in the New Jersey Register, the applicant may apply for nomination of the property for listing in the New Jersey and National Registers under N.J.A.C. 7:4-2.2. The State Historic Preservation Officer's determination on the application for certification of eligibility shall be submitted with the National Register Nomination Form.

SUBCHAPTER 6. STATE FUNDS

7:4-6.1 Expenditure of State funds for historic preservation

(a) The Act requires that only properties on the New Jersey Register shall receive State funding for acquisition, preservation, restoration, and maintenance as historic properties.

(b) It is the responsibility of all State agencies considering funding a property for use as an historic place or site to apply for listing on the New Jersey Register as early as possible in their planning process. State agencies shall contact the Department for help and advice as to the eligibility of a property under their jurisdiction for listing in the New Jersey Register.

(c) Historic properties owned and maintained by the State of New Jersey, Department of Environmental Protection before November 30, 1970, are exempt from this subchapter.

Amended by R.1997 d.373, effective September 15, 1997.
See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

SUBCHAPTER 7. REVIEW PROCEDURES FOR PROJECTS ENCROACHING UPON NEW JERSEY REGISTER PROPERTIES

7:4-7.1 Application procedure for encroachment authorization

(a) During the earliest stage of planning for any undertaking and before taking any action that could result in a physical effect on a property listed in the New Jersey Register, the State, a county, municipality or an agency or instrumentality thereof shall:

1. Consult with the Department for the purpose of defining the boundaries of the area of the undertaking's potential impact;
2. Consult the latest edition of the New Jersey Register to determine if there are any registered properties within the area of the undertaking's potential impact; and
3. Contact the Department and determine if other properties within the area of the undertaking's potential impact have been listed in the New Jersey Register since the most recently published list. Public projects or actions for which acquisition or construction contracts have been let prior to listing on the New Jersey Register shall not require review and approval.

(b) If there is no property on the New Jersey Register in the area of the undertaking's potential impact, the undertaking may commence without further review and approval by the Department pursuant to the Act and this chapter.

(c) If there is property on the New Jersey Register in the area of the undertaking's potential impact, the State, a county, municipality or an agency or instrumentality thereof shall submit an application to the Department for project authorization.

(d) The application shall be prepared by the State, county, municipality or agency or instrumentality thereof planning the undertaking or its authorized representative on forms available from the Department and shall include: maps, photographs, plans, specifications, and proposed agreements sufficient to completely describe the planned undertaking. In addition, the application shall include a complete list of owners of registered properties that would be directly affected by the undertaking and a complete list of local historical societies and historic preservation commissions in the area of the undertaking's potential impact. The application shall also include a list of all affected local government units, any agencies or instrumentalities thereof concerned with historic preservation, and any Statewide organization and local organization specifically concerned with historic preservation in the area of the undertaking's potential impact. The list of property owners shall be the list of private and public property owners (including right-of-way owners) named in official municipal tax records and maps as of the date of the application's submission and shall be certified by the appropriate municipal official. The applicant shall provide with the application a copy of the historic preservation element from the county/municipal masterplan if applicable. If demolition of all or a substantial portion of a property is proposed, the application shall include a structural assessment and an evaluation of whether the property could be reasonably repaired, to be prepared by an architect or engineer with demonstrated experience with historic properties consistent with criteria established in the Secretary of the Interior's Professional Qualifications Standards, 36 C.F.R. 61, Appendix, incorporated herein by reference and related guidance as part of the larger Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, incorporated herein by reference, as referenced in 36 C.F.R. 61. An application for relocating property on the New Jersey Register shall also include the information and documentation required in N.J.A.C. 7:4-3.2(c).

Amended by R.1997 d.373, effective September 15, 1997.
See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

In (d), inserted second and fourth sentences.
Amended by R.2003 d.110, effective March 17, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

Rewrote (d).

7:4-7.2 Review of an application for project authorization

(a) Within 30 days of receipt of an application for project authorization, the Department shall review the application for technical and professional completeness and sufficiency and shall notify the applicant in writing as to whether or not the application is complete and sufficient. If the application or material is not complete and sufficient, the Department shall notify the applicant in writing of what information is needed.

(b) Pursuant to N.J.S.A. 13:1B-15.131, the Department shall have 120 days to review an application for project authorization. The 120 day review period shall commence on the date that the Department receives an application that is technically and professionally complete and sufficient. In the event that the Department does not authorize, consent to, conditionally authorize or consent to, deny, or temporarily deny an application within the 120 day period, the application shall be deemed to have been approved. No waiver or extension of the 120 day period shall be allowed. This prohibition shall not apply in those cases in which the Commissioner issues a temporary denial based on a need for additional information. See N.J.A.C. 7:4-7.2(e)7iii.

(c) Upon determination by the Department that an application for project authorization is technically and professionally complete and sufficient, the Department shall:

1. Conduct a review to determine if the undertaking for which the application is submitted constitutes an encroachment or will damage or destroy the historic property under the criteria set forth in N.J.A.C. 7:4-7.4 and the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. 68) and "Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (guidelines issued by the National Park Service, incorporated herein by reference) and available from the Historic Preservation Office, PO Box 404, Trenton, New Jersey 08625-0404 or from website (www.state.nj.us/dep/hpo) or from the National Park Service website (www.nps.gov) or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior and the National Park Service; and

2. Within 45 days after the Department's issuance of notice to the applicant that an application is technically and professionally complete and sufficient, notify the applicant in writing whether or not the undertaking constitutes an encroachment or will damage or destroy the historic property. The notification shall include an explanation of the reasons for the Department's determination. The Department shall send a copy of any notification that an undertaking does not constitute an encroachment or will not damage or destroy the historic property to local historical societies and historic preservation commissions, as listed by the applicant in the application for authorization, pursuant to N.J.A.C. 7:4-7.1(d).

(d) If the Department determines that the undertaking does not constitute an encroachment or will not damage or destroy the historic property, the applicant may proceed with the project upon receipt of the Department's written notice under (c)2 above.

(e) If the Department determines that an undertaking constitutes an encroachment or will damage or destroy the historic property:

1. Within 15 days of receipt of a notice that the undertaking constitutes an encroachment, an applicant shall provide written notice to owners of registered properties that would be directly affected by the undertaking and a complete list of local historical societies, historic preservation commissions and all affected local government units, any agencies or instrumentalities thereof concerned with historic preservation, and any Statewide organization and local organization specifically concerned with historic preservation in the area of the undertaking's potential impact (as listed by the applicant in the application for authorization, pursuant to N.J.A.C. 7:4-7.1(d)) that an application has been submitted to the Commissioner for authorization and has been determined to constitute an encroachment. The written notice shall contain a statement that indicates that the entity receiving the notice or any person directly affected by the undertaking may request in writing, that the Commissioner may ask the Historic Sites Council to conduct a special public meeting specifically on the encroachment application. If the Commissioner receives a written request for a special public meeting from such an entity or from at least five persons directly affected by the undertaking, the Commissioner may ask the Historic Sites Council to conduct a special public meeting within the 120 day review period. If the Commissioner does not receive a written request for a public meeting from such an entity or from at least five persons directly affected by the undertaking, the Commissioner may, on his or her own initiative, request the Historic Sites Council to conduct a special public meeting within the 120 day review period or determine that such a special public meeting is unnecessary. Preference shall be given to holding the special public meeting in the municipality wherein the area, site, building, structure or object included in the New Jersey Register of Historic Places that would be affected by the application is located, or in a municipality as close thereto as can reasonably be arranged.

2. The application for project authorization shall be scheduled to be reviewed by the Historic Sites Council at a regularly scheduled meeting or a special public meeting pursuant to (e)1 above. At least 21 days before the regularly scheduled or special meeting date, the Department shall determine the agenda for the Council meeting and consistent with the Open Public Meeting Act, N.J.S.A. 10:4-6 et seq. send written notification of the meeting to:

- i. The applicant;
- ii. The chief elected local official of the municipality in which the proposed undertaking would occur;
- iii. Two major circulation newspapers, including a major circulation newspaper in the area of the municipality in which the proposed undertaking would occur;
- iv. Local historical societies and historic preservation commissions, as listed by the applicant in the

application for authorization pursuant to N.J.A.C. 7:4-7.1(d);

v. All affected local government units, any agencies or instrumentalities thereof concerned with historic preservation, and any recognized organization specifically concerned with historic preservation in the State and in the area of the undertaking's potential impact as listed by the applicant in the application for authorization pursuant to N.J.A.C. 7:4-7.1(d);

vi. Owners of registered properties that would be directly affected by the undertaking, as listed by the applicant in the application for project authorization, pursuant to N.J.A.C. 7:4-7.1(d). For an application where more than 25 owners would be directly affected by the undertaking, the Department may publish a public notice to property owners concerning the Council's meeting instead of individually notifying all property owners. Such public notice shall be published 21 days before the scheduled meeting date; and

vii. Interested parties who have advised the Department in writing of their interest in the application.

3. If an applicant wishes to withdraw an application for project authorization, the applicant shall notify the Department in writing of said withdrawal and shall also immediately notify all parties listed by the applicant in the application for project authorization pursuant to N.J.A.C. 7:4-7.1(d) and interested parties who have advised the Department in writing of their interest in the application, pursuant to (e)1 above. If a withdrawal is within 48 hours of a regularly scheduled or special meeting of the Historic Sites Council and if it is not possible for all people to be notified of the withdrawal, then the Historic Sites Council, at its discretion, may accept public comment on the withdrawn application on the day for which the application was scheduled. Such comments may be considered if pertinent to a new application on the same encroachment.

4. The Historic Sites Council shall meet to review the application for project authorization and evaluate the encroachment using the criteria set forth in N.J.A.C. 7:4-7.4 and the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. 68) and "Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (guidelines issued by the National Park Service, incorporated herein by reference) and available from the Historic Preservation Office, PO Box 404, Trenton, New Jersey 08625-0404 or from website (www.state.nj.us/dep/hpo) or from the National Park Service website (www.nps.gov) or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior and the National Park Service. The Council shall also consider the following:

i. The public benefit of the proposed undertaking;

ii. Whether or not feasible and prudent alternatives to the encroachment exist; and

iii. Whether or not sufficient measures could be taken to avoid, reduce or mitigate the encroachment.

5. The Historic Sites Council shall submit written recommendations to the Commissioner.

6. In addition to considering the recommendations of the Historic Sites Council, the Commissioner may direct the conduct of a public hearing on the application prior to granting or denying authorization of the encroachment.

7. Within the 120-day review period under (b) above, the Commissioner shall transmit to the applicant a written decision with specific reasons therefor which shall either:

i. Authorize or consent to the encroachment as described in the application;

ii. Authorize or consent to the encroachment with conditions. The conditions may include, but are not limited to, placement of a preservation covenant in the deed for the property in the event of the conveyance of any interest in the property; marketing of the historic property over a reasonable period of time; recordation of the historic property to the standards and approval of the Historic American Buildings Survey or Historic American Engineering Record (HABS/HAER) through photographs, drawings and written narrative; archaeological survey or data recovery; salvage of significant architectural features; and revisions to the architectural plans or other conditions that would enable the project to meet the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. 68) and "Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (guidelines issued by the National Park Service, incorporated herein by reference) and available from the Historic Preservation Office, PO Box 404, Trenton, New Jersey 08625-0404 or from website (www.state.nj.us/dep/hpo) or from the National Park Service website (www.nps.gov) or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior and the National Park Service, or otherwise avoid, reduce or mitigate the encroachment.

(1) The applicant shall respond to the conditions within 60 days of the issuance of the Commissioner's decision. If the applicant agrees in writing that all the conditions are acceptable and will be met, the undertaking may proceed. If the applicant does not respond within 60 days or does not agree with all the conditions, the Commissioner shall deny the application for project authorization. Prior to the undertaking, the applicant shall submit to the Department written and photographic documentation or revised final architectural plans and specifications to show how the conditions of the approval have been or will be satisfied. Upon completion of the undertaking, the applicant shall document to the satisfaction of the Department that the applicant has complied with all the conditions;

- iii. Deny the application for project authorization temporarily based on such factors as need for additional information, exploration of additional alternatives for avoidance or mitigation of the encroachment, damage, destruction or other adverse effects. The applicant shall respond to the Department within 60 days from the date of issuance of a temporary denial. In the event that no response is received by the Department within 60 days, the Commissioner shall deny the application. If the applicant submits a complete response including all information requested by the Department, it shall be within the discretion of the Department as to refer additional information to the Historic Sites Council, and the Department shall make a final determination within 60 days after receipt of the response; or
- iv. Deny the application for project authorization with specific reasons therefor.

Amended by R.1997 d.373, effective September 15, 1997.
See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

In (b), inserted last two sentences; in (c)1, amended sources of criteria to determine encroachment, damage or destruction; Inserted new (e)1, (e)2iii and (e)3; recodified former (e)1 as (e)2, (e)2v and vi as (e)2vi and vii, and former(e)3 through 5 as (e)4 through 7; in (e)3, inserted "Two major circulation newspapers, including"; in (e)4, amended sources of criteria to determine encroachment; in (e)7ii, amended sources of standards or guidelines; and in (e)7iii, inserted " . . . it shall be within . . . a final determination".

Amended by R.2003 d.110, effective March 17, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

Inserted references to the website address throughout.

Case Notes

The Department of Environmental Protection's (DEP) approval of roadway improvements in historic district for shopping center development was not arbitrary and capricious; factors other than historic significance were important, most importantly traffic safety, and objectors did not satisfactorily prove that historic preservation considerations outweighed those other factors. *Beattystown Community Council v. Department of Environmental Protection*, 313 N.J.Super. 236, 712 A.2d 1170 (N.J.Super.A.D. 1998).

7:4-7.3 Emergency undertakings

(a) In the case of an emergency undertaking which needs to be implemented by the State, a county or municipality or an agency or instrumentality thereof, within 30 days of an emergency, the State, county or municipality or agency or instrumentality thereof, in lieu of the application procedure in N.J.A.C. 7:4-7.1, shall notify the Department by telephone and in writing as soon as possible. Said notification shall include: the name and address of the property listed in the New Jersey Register, a written description of the scope of the emergency undertaking, photographs documenting the condition of the registered property, a statement from an appropriate expert demonstrating how the condition of the property constitutes an immediate, direct, demonstrable and severe hazard to the safety of the public, and a statement as to how the undertaking will encroach upon the registered property. If demolition of all or a substantial portion of a property is proposed, the notification shall include a structural assessment and an evaluation of whether

the property could be reasonably repaired, to be prepared by an architect or engineer with demonstrated experience with historic properties consistent with criteria established in the Secretary of the Interior's Professional Qualification Standards and related guidance as part of the larger Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as referenced in 36 C.F.R. 61.

(b) The Department shall respond within seven calendar days after receipt by the Department of the complete notification as described in (a) above. If the Department determines that the condition of the property constitutes an immediate direct, demonstrable, and severe hazard to the safety of the public, Historic Sites Council review is not required and the Department shall respond in accordance with N.J.A.C. 7:4-7.2(e)5 but within seven calendar days after receipt by the Department of the complete notification as described in (a) above. Until the Department authorizes the emergency undertaking, the State, county or municipality or agency or instrumentality thereof conducting the emergency undertaking shall only take measures necessary to stabilize or isolate the affected property to prevent danger to the public. The Department may determine that the situation does not constitute an emergency and require that the applicant follow the application procedure in N.J.A.C. 7:4-7.2.

Amended by R.2003 d.110, effective March 17, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).
In (a), rewrote the third sentence.

7:4-7.4 Criteria for determining whether an undertaking constitutes an encroachment or will damage or destroy the historic property

(a) An undertaking will have an adverse effect and therefore constitute an encroachment when the effect of the undertaking on a property listed in the New Jersey Register may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Encroachments include, but are not limited to:

1. Physical destruction, damage, or alteration of all or part of the registered property;
2. Isolation of the registered property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the New Jersey Register;
3. Introduction of visual, audible, or atmospheric elements that are out of character with the registered property or alter its setting; and
4. Acquisition, transfer, sale, lease, easement on, or an agreement or other permission allowing use of a registered property.

(b) An undertaking that would otherwise be found to constitute an encroachment pursuant to (a) above may be

considered by the Department as not being an encroachment when:

1. The registered property is of value only for its potential contribution to archaeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

2. The undertaking is limited to the preservation, rehabilitation, restoration, or reconstruction of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. 68) and "Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (guidelines issued by the National Park Service, incorporated herein by reference) and available from the Historic Preservation Office, PO Box 404, Trenton, New Jersey 08625-0404 or from website (www.state.nj.us/dep/hpo) or from the National Park Service website (www.nps.gov) or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior and the National Park Service; or

3. The undertaking is limited to the acquisition, transfer, sale, lease, easement on, or an agreement or other permission allowing use of a registered property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

Amended by R.1997 d.373, effective September 15, 1997.
See: 29 N.J.R. 2503(a), 29 N.J.R. 4103(b).

In (b)2, inserted reference to preservation and reconstruction, deleted reference to stabilization and protection, and amended sources of standards.

Amended by R.2003 d.110, effective March 17, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

Inserted references to the website address.

SUBCHAPTER 8. CONSULTATION WITH OTHER DEPARTMENT PROGRAMS AND OTHER NON-FEDERAL GOVERNMENTAL AGENCIES

Authority

N.J.S.A. 13:1B-15.108 et seq. and 13:1b-15.128 et seq.

Source and Effective Date

R.2003 d.110, effective March 17, 2003.
See: 34 N.J.R. 3161(a), 35 N.J.R. 1410(a).

7:4-8.1 Definitions

The following words and phrases, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. If there is a conflict with a definition at N.J.A.C. 7:4-1.3, the definition below will control:

"Project" means any planned action, whether private or public, which has the potential to result in direct or indirect effects on any district, site, building, structure or object listed in or eligible for listing in the New Jersey and National Registers of Historic Places. A planned action shall be considered to have an effect whenever any aspect of the action causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualified a historic property to meet the criteria of evaluation for inclusion in the New Jersey and National Register at N.J.A.C. 7:4-2.3. For the purpose of determining effect, alteration of features of the property's location, setting or use may be considered relevant depending on a property's significant characteristics. Direct effects are caused by the project and occur at the same place and time. Indirect effects include those caused by the project that are farther removed in distance or later in time, but are still reasonably foreseeable. Such indirect effects may include changes in the pattern of land use, population density or growth rate that may affect the quality of the historical, architectural, archaeological, or cultural characteristics that qualified a historic property to be listed or eligible for listing in the New Jersey and National Registers of Historic Places.

"Impact" means the adverse effect upon any district, site, building, structure or object included in or eligible for inclusion in the New Jersey and National Registers of Historic Places resulting from the implementation of a project.

7:4-8.2 Types of consultation available to other Department programs and non-Federal governmental agencies

(a) The Historic Preservation Office, under the supervision of the State Historic Preservation Officer, will provide consultation to any Department program and may provide consultation to any non-Federal governmental agency in the following areas:

1. Determining the area of potential effect of a proposed project;
2. Identifying and evaluating property that is potentially eligible for inclusion in the New Jersey and National Registers of Historic Places, pursuant to the criteria in N.J.A.C. 7:4-2.3;
3. Assessing a potential project's impact upon any property eligible for inclusion in the New Jersey and National Registers of Historic Places;
4. Assessing alternatives to avoid or minimize, and/or mitigate the impacts of a project on a listed property or a property that is eligible for inclusion in the New Jersey and National Registers of Historic Places;
5. Formulating recommendations arising from the assessments provided pursuant to (a)4 above; and

6. Providing technical assistance related to the identification, evaluation and protection of historic property as may be requested.

(b) The Historic Preservation Office will attempt to coordinate any such request for consultation with any historic review or consultation required by law.

7:4-8.3 Standards used for consultation

(a) The criteria for evaluating the eligibility of a property for listing in the New Jersey and National Registers of Historic Places is that set forth in N.J.A.C. 7:4-2.3.

(b) The criteria for evaluating the potential for effects and impacts, assessing alternatives and making recommendations in accord with N.J.A.C. 7:4-8.2 is set forth in:

1. The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. Copies are available from the Historic Preservation Office, PO Box 404, Trenton, New Jersey 08625-0404, or from the Department's website (www.state.nj.us/dep/hpo) or from the National Park Service website (www.nps.gov); and

2. The Secretary of the Interior's Standards for Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, 36 C.F.R. 68 et seq. as amended. Copies are available from the Historic Preservation Office, PO Box 404, Trenton, New Jersey 08625-0404, or from the website (www.state.nj.us/dep/hpo) or from the National Park Service website (www.nps.gov).