

**CHAPTER 45
DELAWARE AND RARITAN CANAL
STATE PARK REVIEW ZONE**

Authority

N.J.S.A. 13:13A-12, 13 and 14.

Source and Effective Date

R.1999 d.47, effective January 7, 1999.
See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 45, Delaware and Raritan Canal State Park Review Zone, expires July 5, 2004. See: 35 N.J.R. 5351(a).

Chapter Historical Note

Chapter 45, Delaware and Raritan Canal State Park Review Zone, was adopted as R.1980 d.15, effective January 11, 1980. See: 11 N.J.R. 501(d), 12 N.J.R. 72(a). Pursuant to Executive Order No. 66(1978), Chapter 45 expired on January 11, 1985.

Chapter 45, Delaware and Raritan Canal State Park Review Zone, was adopted as new rules by R.1989 d.61, effective February 6, 1989. See: 20 N.J.R. 23(a), 21 N.J.R. 324(a).

Subchapter 6, Stream Corridor Impact, and Subchapter 9, Traffic Impact, were adopted as new rules by R.1990 d.106, effective February 5, 1990. See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Pursuant to Executive Order No. 66(1978), Chapter 45, Delaware and Raritan Canal State Park Review Zone, was readopted as R.1994 d.100, effective January 28, 1994, and Subchapter 6, Stream Corridor Impact, was recodified as Subchapter 7, Subchapter 7, Detention Facilities in Flood Hazard Areas, was recodified as Subchapter 6 and Subchapter 11, Waiver of Governmental and Private Projects Review, and Subchapter 12, Severability, were recodified as Subchapters 10 and 11 by R.1994 d.100, effective February 22, 1994. See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Pursuant to Executive Order No. 66(1978), Chapter 45, Delaware and Raritan Canal State Park Review Zone, was readopted as R.1999 d.47, effective January 7, 1999, and Subchapter 6, Detention Facilities in Flood Hazard Areas, was repealed and Subchapter 7, Stream Corridor Impact, Subchapter 8, Visual and Natural Quality Impact, Subchapter 9, Traffic Impact, Subchapter 10, Waiver of Government and Private Projects Review, and Subchapter 11, Severability, were recodified as Subchapters 6 through 10 by R.1999 d.47, effective February 1, 1999. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. REVIEW ZONE OF THE DELAWARE AND RARITAN CANAL STATE PARK

7:45-1.1 Purpose

The Delaware and Raritan Canal Commission was created pursuant to the Delaware and Raritan Canal State Park Law of 1974, N.J.S.A. 13:13A-1 et seq. The Commission is authorized to prepare and adopt a master plan for the physical development of the Delaware and Raritan Canal State Park and to establish zones in which it will review all private and public projects that impact on the Park and insure that the projects conform as nearly as possible to the master plan adopted by the Commission. This chapter establishes the procedure for the review and sets forth the standards that will be considered by the Commission. The rules are intended to encourage consideration of the natural and recreational resources of the Park and its waterways at the earliest stages of land-use planning and to promote cooperation between the Commission, municipal, county and state reviewing agencies, and private land users.

7:45-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings:

“Act” shall mean the Delaware and Raritan Canal State Park Law of 1974, P.L. 1974, c.118, N.J.S.A. 13:13A-1 et seq.

“Canal” means the Delaware and Raritan Canal and the abandoned section of the canal in the Township of Hamilton, County of Mercer.

“Class II watershed” means a watershed identified by the Commission as having no history of significantly mingling with the canal water under either normal or storm conditions. The location of these watersheds can be obtained from the Commission’s office in Stockton, New Jersey.

“Commission” means the Delaware and Raritan Canal Commission.

“Department” means the Department of Environmental Protection.

“Flood hazard area” means the floodway and flood fringe area of a delineated stream designated by the Department pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

“General development plan” means a phased development plan as defined in the Municipal Land Use Law (N.J.S.A. 40:55D-45.1 through 45.8).

“Governmental projects” means the undertaking of a public improvement, construction or land-use change by a State department or agency, county, municipality or any other governmental entity except interior alterations to an existing structure involving no change of use.

“Major project” means:

1. If no part of the project site falls within Zone A, but some of it falls within Zone B, the entire project is “major” if it will, since January 11, 1980, cumulatively cover one acre of land with impervious surfaces.

2. If any part of a project site falls within Zone A, the entire project is “major” if it:

i. Involves construction, development, or redevelopment of four or more dwelling units; or

ii. Involves no dwelling units, but will cover land which is uncovered at the time of submission of the application with one-fourth acre or more of impervious surfaces.

“Master Plan” means the Delaware and Raritan Canal State Park Master Plan consisting of the following five planning documents adopted by the Commission as the Master Plan including any modification, revision or amendment thereof subsequently adopted by the Commission pursuant to N.J.S.A. 13:13A-13:

1. Master Plan (May, 1989);
2. Design Guide (December, 1980);
3. Historic Structures Survey (June, 1982);
4. Historic Recreational Development Plan (September, 1984); and
5. Development, Acquisition and Management Plan (January, 1996).

“Minor project” means:

1. Regarding Zone A, a project which is not a major project.

2. Regarding Zone B, only major projects are reviewed in Zone B.

“Municipal approving agency” means any body or instrumentality of the municipality responsible for the approval of private projects or the issuance of permits, which shall include, but not be limited to, building permits, zoning variances, and excavation permits. “Municipal approving agency” shall include, but not be limited to, governing bodies, planning and zoning boards, construction officials, building inspectors, and municipal engineers.

“Net fill” means the total amount of fill created incidental to the completion of the project less the amount of excavated material removed during completion of the project, both measured below the elevation of the edge of the flood hazard area.

“One hundred year flood line” means the line which is formed by following the outside boundaries of the area inundated by a 100 year flood. A 100 year flood is estimated to have a one percent chance, or one chance in 100, of being equalled or exceeded in any one year.

“Park” means the Delaware and Raritan Canal State Park as determined by the Department.

“Private projects” means any proposed development, structure or land-use change requiring any municipal approval or permit, except interior alterations to an existing structure.

“Review Zone” means that region designated by the Commission appertaining to and including the Park in which proposed projects may cause an adverse drainage, aesthetic or other ecological impact on the Park. The Review Zone includes subzones designated as Zone A and Zone B as follows:

1. Zone A is the area within 1,000 feet on either side of the center line of the Canal except in Princeton Township where the west bank of Carnegie Lake shall be the boundary of Zone A, and where the Raritan River is within 1,000 feet, its furthest bank being the boundary; and
2. Zone B is the balance of the Review Zone.

The Review Zone is delineated on maps available for review at the Commission’s office in Stockton, New Jersey. All or parts of the following counties and municipalities are included in the Review Zone:

In Hunterdon County: Delaware, East Amwell, Franklin, Kingwood, Lambertville, Raritan, Stockton, West Amwell.

In Mercer County: East Windsor, Ewing, Hamilton, Hightstown, Hopewell Borough, Hopewell Township, Lawrence, Pennington, Princeton Borough, Princeton Township, Trenton, Washington, West Windsor.

In Middlesex County: Cranbury, Monroe, New Brunswick, North Brunswick, Plainsboro, South Brunswick.

In Monmouth County: Millstone.

In Somerset County: Franklin, Hillsborough, Manville, Millstone, Montgomery, Rocky Hill, South Bound Brook.

“Stream corridor” includes a stream that is designated in N.J.A.C. 7:45-7.1(a) from the point where the stream feeds into the Canal Park up to the point at which the stream drains less than 50 acres. “Stream corridor” also includes any tributary to a stream designated in N.J.A.C. 7:45-7.1(a) from the point at which it feeds into the designated stream up to the point at which the tributary drains less than 50 acres. “Stream corridor” further includes all of the land within the 100 year flood line on either side of that portion of the designated stream or tributary that is in the stream corridor and all of the land within a 100 foot wide buffer around the 100 year flood line on either side of that portion of the designated stream or tributary that is in the stream corridor.

“Structure” means any assembly of materials above or below the surface of land or water, including, but not limited to, buildings, fences, signs, dams, fills, levees, bulkhead, dikes, jetties, causeways, culverts, roads, railroads, bridges and the facilities of any utility or governmental agency. Trees or other vegetation shall not be considered to be structures.

“T.R. 55” means the U.S. Soil Conservation Service’s “Urban Hydrology for Small Watersheds: Technical Release No. 55,” incorporated herein by reference, as amended and/or revised.

Amended by R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Definition of stream corridor added.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.
See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

Inserted “General development plan”, “Structure” and “T.R. 55”; rewrote “Major project” and “Review Zone”; in “Master Plan”, rewrote 5; in “Minor project”, rewrote 2; and in “Private projects”, deleted “involving no change of use or connections to publicly owned sewerage systems” at the end.

7:45-1.3 Scope of review

(a) In the Review Zone, the Commission shall review governmental and private projects which have the potential to cause an adverse impact on the Park including drainage, aesthetic and ecological factors. In addition, the Commission shall approve all State actions that impact on the Park. Each project and State action will be reviewed for its conformance with the objectives of the Master Plan of the Delaware and Raritan Canal State Park and with the specific standards of this chapter. Review will address four specific types of impact.

1. Storm drainage and water quality impact;
2. Visual and natural quality impact including historic impact;

3. Stream corridor impact; and
4. Traffic impact.

(b) In each case, the scope and depth of review will depend upon the size and location of the land-use activity.

1. In Zone A:

i. Major projects are reviewed for storm drainage and water quality impact, historic, visual and natural quality impact, traffic impact, and if any portion of a major project is located in any of the stream corridors designated in N.J.A.C. 7:45-6.1(a), it is reviewed for stream corridor impact.

ii. Minor projects are reviewed for storm drainage and water quality impact, and visual and natural quality impact. Submission requirements and stormwater management measures are significantly less rigorous for minor projects than for major projects. They are, however, expected to comply with the general standards in N.J.A.C. 7:45-5 for water quality and N.J.A.C. 7:45-7 for visual and natural quality impact.

2. In Zone B, major projects are reviewed for storm drainage and water quality impact. Major projects in Zone B, any part of which is within one mile of any portion of the Park and having direct access to a road which enters Zone A, are reviewed for traffic impact. If any portion of a major project is located in any of the stream corridors designated in N.J.A.C. 7:45-6.1(a), it is reviewed for stream corridor impact.

Amended by R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Stream corridor and traffic impact review placed within the scope of review of governmental and private projects in the Review Zone.
Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a)2, added "including historic impact" at the end; and in (b), rewrote 1i, changed N.J.A.C. reference in 1ii, and rewrote the third sentence in 2.

7:45-1.4 Master Plan of the Delaware and Raritan Canal State Park

(a) The objectives of the Master Plan of the Delaware and Raritan Canal State Park are as follows:

1. The Delaware and Raritan Canal is a water supply system.

i. The integrity of the Canal as a structure which carries water must be protected.

ii. The quality of the water then enters the Canal—whether from a point source, overland flow of storm water runoff, or from groundwater exchange—must be suitable for a source of drinking water.

iii. Other uses or development projects must be compatible with the need to operate and maintain the Canal as a water supply system.

2. The Park is a site for recreational activities.

i. Recreational development should be aimed at encouraging the widest possible range of compatible recreational activities.

ii. The types of recreational activities to be encouraged depend upon the "Canal Environment" as designated in the Master Plan.

iii. Recreational development and access are to be allocated to all parts of the Park in order to avoid concentrating use at a few locations.

iv. Adjoining recreational resources should be connected to the Park for mutual enhancement. The development of additional recreational resources adjoining the Park is to be encouraged.

3. The Park is a historic resource.

i. All repair, maintenance, and development work on the Canal and its associated structures should respect and enhance the historic character of the Park.

ii. The Park's historic character is derived as much from the context through which the Canal flows as from the Canal's structures. That context—the area that can be seen from the Canal and its towpath—should be preserved in a manner that reflects its historic nature.

iii. The role that the Canal played in the history of New Jersey should be interpreted for public edification.

iv. The Park should provide an appropriate context for nearby historic structures, landscapes, or sites.

4. The Park is an area that should be maintained in its natural state.

i. The lands and water in the Park should be maintained to preserve wildlife habitats and the flourishing of natural vegetation communities.

ii. The Park should be a means of connecting other natural areas in the region, thereby enhancing their ability to function.

iii. Rare, endangered, or threatened species of plants and animals found in the park should be carefully preserved.

iv. Landscape materials used in the Park, or used on adjoining lands, should be native to the region and appropriate for their specific habitat.

v. The greatest possible variety of habitats for plants and animals should be preserved.

vi. The Park should serve as a migratory route for plants and animals.

5. The Park is a means of enhancing urban areas.

i. The recreational, historic, and natural conservation objectives are all applicable to urban areas through which the Canal flows and should be appropriately applied there.

ii. The Park should serve as a transportation route within urban areas for non-motorized vehicles and pedestrians.

iii. The Park should be both a boundary for urban neighborhoods and a means of connection among them.

iv. The Park should be a means of connecting urban areas with recreational areas, historic sites, and natural areas in the region beyond the urban boundary.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).
Amended by R.1999 d.47, effective February 1, 1999.
See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

SUBCHAPTER 2. APPLICATION FOR PROJECT REVIEW AND REVIEW PROCEDURES

7:45-2.1 General provisions

(a) Each applicant shall submit to the Commission sufficient information to adequately review and consider the project. Application forms are available from the Commission.

(b) Applicants may combine exhibits for any project provided all required information is shown thereon with sufficient clarity to be understood.

7:45-2.2 Application for review of a private project

(a) The initial application for a proposed private project within the Review Zone shall be submitted by the applicant to the appropriate municipal approving agency. If approved by the municipal approving agency, the application shall be reviewed by the Commission.

(b) An application for review of a private project may be submitted by the applicant to the Commission for staff review:

1. At any time prior to municipal review and approval; or
2. At any time during the planning stages for pre-application discussion with the Commission staff.

(c) The applicant or the municipal approving agency shall submit applications to the Commission after the municipal approving agency has approved the project, unless an application for the proposed project has been previously made to the Commission.

(d) No application shall be reviewed by the Commission until it has been determined by the staff to be a complete application which, in addition to the pertinent submission

requirements in this chapter, shall include a resolution of approval of the proposed project by the appropriate municipal approving agency.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-2.3 Application for review of governmental projects

State departments or agencies, counties, municipalities and any other governmental entity shall submit plans for reviewable projects prior to undertaking them and are encouraged to discuss proposed projects with the Commission staff at the earliest planning stages.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-2.4 Review of private projects

(a) At any time before applying for Commission approval, an applicant may submit preliminary planning documents or may request a pre-application conference to discuss the project with the Commission staff. The purpose of this submission or conference is to enable the applicant to plan economically for conformity with the Master Plan and its policies and standards, and those of this chapter. No requirements are imposed by this chapter as to plans, documents, or data to be submitted or presented for discussion at a pre-application conference. However, this chapter contains a list of materials and data required as part of any application for review of each specific impact. It is advisable that the applicant provide the Commission with as much of this information as practicable for the pre-application conference.

(b) A report on the preliminary submission or pre-application conference shall be prepared by the Commission staff and may include:

1. A summary of the strengths and weaknesses of the project as related to the policies and standards of the Master Plan and this chapter.
2. A recommendation to the applicant and the reviewing municipal agency or official.

(c) The Commission's staff report shall, upon completion, be mailed to the applicant, the county planning board, and the municipal approving agency.

(d) Comments, findings, conclusions, and recommendations of the Commission's staff report are for guidance only and shall not be binding upon the applicant or the Commission.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).
Amended by R.1999 d.47, effective February 1, 1999.
See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

7:45-2.5 Waiver of submission requirements

The Commission may waive some of the submission requirements for a particular project if the Commission already has the information or if the applicant establishes to the satisfaction of the Commission that the information is not necessary for the Commission's review of the project.

7:45-2.6 Project review and decision

(a) Within 30 days after the date that an application for project review is received in the Commission's office, the Commission staff shall review the application to determine if all the items required for a complete application have been submitted and take one of the following actions:

1. Notify the applicant in writing of any missing items required for a complete application; or
2. Notify the applicant in writing that the application is complete and notify the appropriate municipal approving agency.

(b) If no action is taken by the Commission staff within a period of 30 days from the date that an application for project review is received in the Commission's office, the application shall be deemed to be complete.

(c) Within 45 days from the date when an application has been declared complete, the Commission shall take one of the following actions:

1. Approve the application and advise the appropriate municipal approving agency that the project can proceed as proposed, subject to conditions in N.J.A.C. 7:45-3;
2. Reject the application and so advise the appropriate municipal approving agency and the governing body of the municipality; or
3. Approve the application subject to conditions and notify the appropriate municipal approving agency which shall be responsible for assuring that the conditions are satisfied before issuing a permit.

(d) If no action is taken by the Commission within a period of 45 days from the date that the application is declared to be complete, the application shall be deemed to have been approved by the Commission. In such an event, the Commission shall issue a Certificate of Approval, but may require any detention basin maintenance easements and/or stream corridor easements as required in N.J.A.C. 7:45-5.4(j) and 6.6.

Amended by R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Completeness review changed from five days to 20 days, with automatic completeness provision added.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In the introductory paragraph of (a) and in (b), substituted references to 30 days for references to 20 days; and in (d), added a second sentence.

7:45-2.7 Review of general development plans

(a) The Commission shall review and approve, reject, or modify any general development plan upon receipt of a complete application.

(b) All submission requirements and review procedures shall be the same for general development plan applications as for other private project applications.

(c) A Certificate of Approval issued for a general development plan shall lapse if:

1. A complete application for a Certificate of Approval for the first phase of development is not received by the Commission within 10 years of the date that the general development plan was approved;
2. There is a 10 year period during which no complete applications for Certificates of Approval for phases of the general development plan approved under the Municipal Land Use Law are received by the Commission; or
3. The municipal permits or approvals expire, lapse, or are revoked.

(d) In the event that a complete application cannot be made because details of the project that are necessary for the Commission's review have not been approved by the municipal reviewing agency, the Commission shall deny review of the application.

(e) The Commission's review procedure and criteria for review of general development plan applications shall be the same as described in this chapter for other private projects.

(f) If the Commission has granted a Certificate of Approval for a general development plan, the applicant or his successors shall be responsible for submitting to the Commission all plans and calculations on phases of the project as these phases receive municipal site plan approval. In reviewing these phases of a project, the Commission shall be guided by the conformity of each phase to the approved general development plan.

(g) When the Commission has granted a Certificate of Approval to the first phase of a general development plan, but has not approved the full general development plan, the Commission is not committed to approving any other phases of that plan.

New Rule, R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (c)2, inserted "approved under the Municipal Land Use Law" following "plan".

7:45-2.8 Review of governmental projects

(a) The Commission shall to the extent of its jurisdiction review any project in the Review Zone proposed by a governmental agency, including, but not limited to, agencies of the State, county, municipality, school boards, and sewer authorities to insure that these actions conform as nearly as possible to the Commission's Master Plan and relevant local plans or initiatives. The Commission shall take action as follows:

1. For projects sponsored by State agencies in the Review Zone, but not in the Canal Park, the Commission shall approve the project upon being satisfied that it conforms as nearly as possible to the Commission's Master Plan and relevant local plans or initiatives.

2. For any governmental project in the Canal Park, the Commission shall review and either approve, reject or conditionally approve the project.

3. For any project in the Review Zone sponsored by a governmental agency other than a State agency, the Commission shall review and either approve, reject or conditionally approve the project.

(b) Any governmental agency planning to undertake a project in the Review Zone:

1. Shall submit its plans and such data required by the Commission for the Commission's review prior to physically undertaking the project; and

2. Is encouraged to informally discuss its plans with the Commission at any time prior to submission of its plans for review; but in any case,

3. Shall submit its plans to the Commission for its review and approval not less than 60 days before advertising for bids for the construction of a project or execution of a contract for a project, whichever is sooner.

Recodified from 7:45-2.7 and amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a), inserted "to the extent of its jurisdiction" following "shall" in first sentence of the introductory paragraph, and deleted a former 4.

7:45-2.9 Notice of decision

(a) The Commission shall notify the Governor of each decision concerning governmental projects within the Park.

(b) For all private projects, the Commission shall notify the following in writing of its final decision: the applicant or his agent, the appropriate municipal and county approving agencies, and all affected persons who specifically requested notice.

(c) The Commission's decision shall be binding on the applicant, the municipality and the municipal approving agency. In the case of any violation or threat of a violation of a Commission decision by a municipality or by the appropriate municipal approving agency, the Commission may institute civil action:

1. For injunctive relief;

2. To set aside and invalidate a decision made by a municipality or appropriate municipal approving agency in violation of the Act, this chapter or the Commission's decision; or

3. To restrain, correct or abate such violation.

Recodified from 7:45-2.8 and amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (b), inserted a reference to agents.

7:45-2.10 Review of State permits

(a) The Commission shall review and either approve, reject or modify each permit or approval to be issued by any State department or agency to any person or governmental entity if the permit or approval directly involves any portion of the Park or any activity therein.

(b) Prior to the issuance of each reviewable State permit, a complete permit application together with all supporting information, shall be submitted by the applicant to the Commission, unless the department or State agency involved has already done so. The Commission shall, within 45 days of receiving a copy of the complete permit application and all other information, either approve, reject, or approve with conditions the permit. The Commission shall notify the applicant and the state department or agency of the Commission's decision within 10 days of that decision.

Recodified from 7:45-2.9 by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Repealed prior text at 7:45-2.10, Review of State actions.

7:45-2.11 Private projects exempt from project review

(a) Any private project which has received preliminary site plan or preliminary subdivision approval from the appropriate municipal approving agency prior to February 5, 1990 shall be exempt from review by the Commission under N.J.A.C. 7:45-6 and 8, unless:

1. The preliminary site plan or preliminary subdivision approval expires or is amended; or

2. The project is changed such that it requires either an amended or a new municipal approval.

New Rule R.1990 d.106, effective February 5, 1990.

See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

Rewrote the section.

SUBCHAPTER 3. CERTIFICATE OF APPROVAL

7:45-3.1 Certificate of Approval

(a) Construction shall not begin on any project prior to issuance of the Commission's Certificate of Approval which shall be issued within 10 days of the decision granting approval or conditional approval and receipt of the proof of filing set forth in (g) below.

(b) A Certificate of Approval shall explicitly state any conditions imposed by the Commission.

(c) Failure to comply with any provision or any condition imposed in a Certificate of Approval shall render the approval null and void.

(d) The applicant shall not deviate from the approved plans and any deviation shall render the approval null and void if the Commission determines that the deviation substantially alters the character of the project or impairs the intent of either the Master Plan or this chapter.

(e) The holder of the Certificate of Approval shall allow the Commission or its authorized agent access to the project site to inspect the project and otherwise determine compliance with the Certificate of Approval and this chapter.

(f) The Certificate of Approval shall lapse:

1. If construction does not commence within three years from the date of the Certificate and no extension is granted by the Commission; or
2. If construction ceases for a period of one year; or
3. If the municipal permits or approvals expire, lapse, or are revoked.

(g) A Certificate of Approval shall be extended for an additional period of three years if the applicant requests and demonstrates that:

1. No substantial change to the project is proposed; and
2. The municipal approval for the project is valid for the period of the three-year extension.

(h) When the Commission's Notice of Decision requires an easement affecting some or all of the property in question, a Certificate of Approval shall not be issued until the wording of the easement has been approved by the Commission or its delegate and until proof is submitted to the Commission or its delegate of the recording of such easement in the office of the appropriate County Clerk or Registrar of Deeds.

(i) The holder of the Certificate of Approval shall notify the Commission at least 10 days prior to start of construction.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).
Amended by R.1999 d.47, effective February 1, 1999.
See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

Inserted a new (g); recodified former (g) and (h) as (h) and (i); and in the new (h), substituted references to easements for references to Conservation and Maintenance Easements.

SUBCHAPTER 4. ADJUDICATORY HEARINGS

7:45-4.1 Request for an adjudicatory hearing

(a) When the Commission denies or approves with conditions a project, it shall notify the applicant, municipality, municipal reviewing agency and those affected parties who specifically requested notice of the Commission's decision of the decision. This notice shall include information on the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. The notice shall include the following:

1. Where and to whom hearing requests should be sent;
2. The deadline by which hearing requests must be submitted; and
3. The information that is required to be in the hearing request under (c) below.

(b) Within 30 calendar days following the service of the notice of decision under N.J.A.C. 7:45-2.8 or N.J.A.C. 7:45-10.2(c), the applicant, municipality, municipal approving agency or affected party may submit a request to the Commission for an adjudicatory hearing to contest the denial or approval with conditions of a project under N.J.A.C. 7:45-2.8 or a waiver request under N.J.A.C. 7:45-10.

(c) The hearing request shall contain:

1. The name, mailing address and telephone number of the person making the request and the project number;
2. Demonstration of the particular interest of the requester;
3. The names and addresses of the persons whom the requester represents;
4. Statement of each legal or factual question alleged to be at issue and their relevance to the decision;
5. Designation of the specific factual areas to be adjudicated and the hearing time established for that adjudication;
6. Information supporting the request or other written documents relied upon to support the request shall be submitted unless it is already in the administrative record;
7. Specific references to the contested conditions, as well as suggested revised or alternative conditions which, in the judgment of the requester, would be required to implement the purposes and policies of the Act and this chapter.

Amended by R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).
Provision for adjudicatory hearing for a waiver request added.
Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-4.2 Action on request for hearing

(a) The Commission shall determine whether a request for a contested case hearing should be granted. In making such determination, the Commission shall evaluate the request to determine whether the matter constitutes a contested case, as defined by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) If the Commission determines that the matter constitutes a contested case, the hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) If the Commission grants a request for an adjudicatory hearing, the Commission shall identify those contested conditions for which an adjudicatory hearing has been granted. The Commission shall set forth these conditions in writing and serve notice in accordance with N.J.A.C. 7:45-4.3. Conditions which are not contested or for which the Commission has denied the hearing request shall not be considered at the hearing.

(d) If the Commission grants a request for a hearing, in whole or in part, in regard to a notice of decision, then any other request for a hearing in regard to the notice shall be treated as a request to be a party and the Commission shall grant any such request which meets the requirements of N.J.A.C. 7:45-4.1(c).

(e) If a request for a hearing is denied in whole or in part, the Commission shall briefly state the reasons. Such denial shall constitute the final action of the Commission.

(f) The Commission may, upon request and for good cause shown, stay the issuance of the Certificate of Approval under N.J.A.C. 7:45-3 pending a final decision on the appeal.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-4.3 Notice of hearing

Public notice of the grant of a hearing shall be given by mailing a copy to the applicant, municipality and municipal approving agency.

7:45-4.4 Conduct of hearing

Hearings shall be governed by procedures described in "New Jersey Uniform Administrative Procedure Rules, 1980", N.J.A.C. 1:1.

SUBCHAPTER 5. STORM DRAINAGE AND WATER QUALITY IMPACT REVIEW

7:45-5.1 Purpose and scope of review

The Commission shall review projects that produce storm-water runoff that will drain into the Park, either directly or indirectly through a stream. All projects within Zone A and Zone B of the Review Zone, except those projects expressly exempted by this chapter or waived by the Commission, shall be subject to review for their drainage impact on the Park.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-5.2 Submission requirements

(a) An applicant shall obtain from the Commission a "Checklist for Water Quality and Stormwater Management Review" which lists all of the submission requirements identified in this section. A completed checklist shall be submitted with each application.

(b) For all major projects the applicant shall submit to the Commission a topographic base map of the site prior to improvement at a scale of one inch = 200 feet or greater, showing two feet contour intervals for slopes of 10 percent or less, and five foot contour intervals for slopes greater than 10 percent. Where such information is not available, the applicant may request Commission approval of some other contour interval. The map shall indicate at least the following:

1. Existing watersheds;
2. Freshwater wetlands as defined in the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and implementing rules at N.J.A.C. 7:7A-1.4, now in effect or as may subsequently be amended;
3. Outlines of woodland cover;
4. Existing man-made structures;
5. Roads;
6. Utilities;
7. Bearing and length of property lines;
8. Significant natural and man-made features; and
9. Lot and block lines and their designations for the project area.

(c) For all major and minor projects the applicant shall submit a map at a scale of one inch = 400 feet or greater to reflect current conditions, showing the relationship of the proposed development to significant features in the general surroundings. The map shall indicate the following:

1. Roads and pedestrian ways;
2. Access to the site;

3. Adjacent land uses;
4. Existing open space;
5. Public facilities;
6. Landmarks and places of architectural and historic significance;
7. Utilities;
8. The Park (or the direction to the Park);
9. Drainage (including, specifically, streams and other surface water shown on USGS maps); and
10. Other significant features.

(d) For all major projects the applicant shall submit a written and graphic description of the natural and man-made features of the project site and its environs. This description shall include a discussion of soil conditions, slopes, wetlands, and vegetation on the site. Particular attention shall be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

(e) For all major projects the applicant shall submit a project description and site plan map (or maps) at the scale of the topographic base map showing changes proposed and written description of the site plan with a justification of proposed changes in natural conditions. The map shall include:

1. Two foot contours indicating the existing and finished slopes of the land;
2. The location and size of proposed buildings, roads, parking areas, utilities, structural facilities for detaining or recharging stormwater and sediment control, and other permanent structures;
3. The location of any 100 year flood lines on the site;
4. Any streams within 100 feet of any part of the project site;
5. Areas where alterations in the existing terrain, cover and grade are proposed; and
6. Proposed changes in natural cover, including lawns and other landscaping.

(f) For major projects that will include facilities for stormwater detention, the following information, including a map or maps of a suitable scale, shall be provided:

1. Total area to be paved or built upon, estimated land area to be occupied by water detention facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of surface water;
2. Appropriate measure to control velocity and erosion from outlets or discharge points;

3. Details of all water detention plans during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge of each spillway;

4. Maximum discharge and total volume of runoff which would occur from the project area without the improvement for the following storms:

i. The one and one quarter inch of rainfall occurring uniformly within two hours for determining water quality protection, or a one-year storm as defined by T.R. 55; and

ii. The flood and erosion control standard for detention requires that rates of runoff be controlled so that after development the site's peak runoff rate for the two-year storm is 50 percent of the pre-construction peak runoff rate, and the post-construction peak runoff rates for the 10 and 100-year storms are 75 percent and 80 percent, respectively, of the pre-construction peak runoff rates. Velocity in the receiving stream channel shall not be greater after development than before development for the two, 10, and 100-year storms. The percentages only apply to that portion of the post-construction runoff that comes from the site under development. Runoff from off-site land can be computed at 100 percent of the pre-construction rate. These design storms shall be defined as a 24-hour storm using rainfall distribution recommended by the U.S. Soil Conservation Service procedures and making all calculations in conformance with T.R. 55.

5. Maximum discharge and total volume of runoff which would occur from each of the storms described at (e)4i and ii above after complete construction of the proposed improvement and the proposed detention provisions; and

6. Computations fully substantiating the information in this subsection including the assumptions and bases thereof.

(g) For all major projects the applicant shall submit a statement from a licensed engineer of the State of New Jersey that he has reviewed or prepared the plans for the detention facility and the proposed provisions are satisfactory from a dam safety viewpoint and in accordance with any criteria or rules established by the State.

(h) For all major projects the applicant shall submit any other information expressly requested by the Commission which may show the extent to which the project is in accord with the standards of review established in this chapter.

(i) Applicants for minor projects shall submit details of the proposed plan to control and dispose of surface water runoff.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).
Amended by R.1999 d.47, effective February 1, 1999.
See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

Added a new (a); recodified former (a) through (h) as (b) through (i); in the new (b), deleted "not otherwise shown" following "features" in 8, and added 9; in the new (c), deleted "unless otherwise shown" following "features" in 10; in the new (e), inserted "existing and" preceding "finished" in 1; and in the new (f), rewrote 4.

7:45-5.3 General storm drainage and water quality standards

Plans submitted shall demonstrate careful consideration of the general and specific concerns, values and standards of the Master Plan and shall be based upon environmentally sound site-planning, engineering, architectural techniques, and, whenever feasible, incorporate features to promote on-site recharge of stormwater runoff.

7:45-5.4 Specific storm drainage and water quality standards

(a) Each project subject to this chapter shall include facilities for detention of storm runoff through any feasible combination of basins, impoundments, rooftop storage, swales, dry wells, or any other reliable engineering approaches satisfactory to the Commission.

(b) The detention facilities shall provide retention of site runoff for any storm up to and including the two, 10 and 100 year storm. Runoff greater than that for a 100 year storm shall be passed over an emergency spillway. The construction sequence shall show the detention pond constructed in advance of any other soil disturbance. The pond shall act as a sedimentation basin during construction. Sediment shall be removed from the pond after construction of the project is complete.

(c) The outlet from the detention facility shall require the runoff from 1.25 inches of rainfall, falling uniformly in two hours, or a one-year storm as defined by T.R. 55, to be retained so that no more than 90 percent will be evacuated in less than 36 hours from peak. The following exceptions to this subsection will be acceptable:

1. The minimum detention basin outlet orifice shall not be less than three inches in diameter. If this minimum outlet size does not allow for the detention times required in N.J.A.C. 7:45-5.2(e)4ii, then additional techniques to remove the suspended solids in the runoff water shall be provided. Examples of these additional techniques are available from the Commission office.

2. Dry basins serving residential projects may allow evacuation of 90 percent in 18 hours from peak.

3. For Class II watersheds and in cases where runoff is from single family housing and unimproved areas only and where the runoff enters detention basins after moving by sheet flow for at least 30 feet over lawns or leaf-mulch areas, outlets shall be designed so that detention storage when full will be 90 percent evacuated over 12 hours from peak.

4. In all cases, multiple levels or other fully automatic outlets shall be designated and installed so that discharge rates from the development for storms less severe than the design storm will be substantially reduced from what would occur if the development were not constructed. Outlet waters from the design storm shall be discharged from the development at such locations and velocities so as not to cause additional erosion or to cause additional channels below the development.

(d) Runoff from areas uphill or upstream from the project site may be passed across the project site without detention or storage. If it is more convenient, part or all of such water may be passed through the detention means described above and an equal amount of water that originates on the site may be passed downhill or downstream. If any such upstream water enters a detention facility provided as specified under (b) above, the amount of detention provided shall be increased accordingly. For watersheds other than Class II this exchange of water is permitted only if the site runoff is not more polluted than the detained runoff from uphill or upstream. The intention is to require retention for the full period specified in (c) above of the actual runoff from the site or its equivalent and not just of an equivalent amount of water (which may be less polluted).

(e) If part of the site is permanently dedicated to natural vegetative growth, without restriction, improvement or control of any kind, this area may be excluded from all calculations.

(f) If detention basins or other detention facilities are provided through which water passes at times other than following rainfall, the Commission should be consulted concerning design criteria.

(g) Outlets from detention facilities shall be designed to function without manual, electric, or mechanical controls. Outlet waters shall be discharged at such locations and velocities so as not to cause additional erosion or cause additional channels below the development.

(h) The stormwater runoff retained as required by this chapter will result in the accumulation in the detention basin of considerable amounts of sediment, including particulate polluting substances and debris. Provisions shall be made for periodic removal and disposal of accumulated solid materials in accordance with law. Computations for storage capacity shall include estimates for one year's accumulation of solid materials.

(i) Responsibility for operation and maintenance of detention facilities installed, including periodic removal and disposal of accumulated particulate material and debris, unless assumed by a governmental agency, shall remain with the owner of the property and shall be passed to any successor owner. In the case of developments where lots are to be sold, permanent conservation and maintenance easements to ensure continued performance of these obli-

gations shall be completed and executed by the owner of the property on forms provided by the Commission.

(j) If local ordinances or the approved provisions of a water quality management plan require a larger design storm, more detention storage or lower release rates than those specified in this section, then the stricter requirements shall prevail, the provisions specified herein being considered as minima and not maxima.

(k) Where the provisions of separate detention facilities for a number of single sites may be more expensive and more difficult to maintain than provision of joint facilities for a number of sites, the applicant may request that the Commission consider provision of joint detention facilities which will fulfill the requirements of this chapter. In such cases, a properly-planned staged program of detention facilities shall be submitted to the Commission in which compliance with some requirements may be postponed at early stages while preliminary phases are being undertaken and construction funds accumulated.

(l) For purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good condition (if the lands are pastures, lawns or parks), with good cover (if the lands are woods), or with conservation treatment (if the land is cultivated), regardless of conditions existing at the time of computation. As used in this section, the terms "good condition," "good cover" and "conservation treatment" shall have the meanings defined in T.R. 55.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (c), inserted "from peak" following "hours" throughout, substituted "uniformly in two hours, or a one-year storm as defined by T.R. 55," for "in two hours," following "falling" in the introductory paragraph, and rewrote 1; deleted a former (e); recodified former (f) through (l) as (e) through (k); and added a new (l).

7:45-5.5 Alternative standards for Class II watershed

Detention facilities located in a Class II watershed will be reviewed in accordance with the standards in N.J.A.C. 7:45-5.4(a) with modifications described in N.J.A.C. 7:45-5.4(c) and (d). The applicant will be required to provide detention facilities that regulate flooding but will not be required to address water quality.

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

Deleted the former third and fourth sentences.

7:45-5.6 Applicability of storm drainage and water quality standards

(a) The storm drainage and water quality standards do not apply in the following instances:

1. General standards: Zone B minor projects;
2. Standards for stormwater retention: Minor projects in both Zones A and B; and

3. Alternative standards for certain watersheds: Minor projects in both Zones A and B.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

SUBCHAPTER 6. STREAM CORRIDOR IMPACT

7:45-6.1 Scope of review

(a) Except for specific projects expressly waived by the Commission pursuant to N.J.A.C. 7:45-9, all major projects within Zone A or Zone B, or both, of the Review Zone shall be subject to review by the Commission for stream corridor preservation if the project includes a portion of any of the stream corridors of the following designated streams within the Review Zone:

1. Lockatong Creek;
2. Wickecheoke Creek;
3. Alexauken Creek;
4. Swan Creek;
5. Moore's Creek;
6. Fiddler's Creek;
7. Jacob's Creek;
8. Shabakunk Creek;
9. Little Shabakunk Creek;
10. Shipetauken Creek;
11. Duck Pond Run;
12. Stony Brook;
13. Millstone River;
14. Heathcote Brook;
15. Beden's Brook;
16. Simonson Creek;
17. Six Mile Run;
18. Ten Mile Run;

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-6.2 Submission requirements

(a) For all major projects within Zone A, or Zone B, or both, of the Review Zone and which include a portion of the stream corridor of any designated stream under N.J.A.C. 7:45-6.1(a), the applicant shall submit to the Commission a map of the project site delineating the stream corridor at a scale of one inch equals 200 feet and containing the following:

1. The 100 year flood line;
2. The 100 foot wide buffer along the 100 year flood line; and
3. The location of all improvements proposed to be located within the stream corridor.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a), changed N.J.A.C. reference in the introductory paragraph.

7:45-6.3 Permitted uses within designated stream corridors

(a) In addition to preserving land in its natural state and only to the extent not prohibited by N.J.A.C. 7:45-6.4(a), only the following uses shall be permitted within the stream corridor of a stream designated in N.J.A.C. 7:45-6.1(a):

1. Any agricultural use or activity which does not require a permit from a municipal approving agency except as listed in N.J.A.C. 7:45-6.4(a)5;
2. Wildlife sanctuary, woodland preserve, and arboretum, except facilities subject to damage by flooding; and
3. Game farms, fish hatcheries, or hunting and fishing reserves, operated for the protection and propagation of wildlife, but excluding enclosed structures.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a), changed N.J.A.C. references in the introductory paragraph, and added an exception at the end of 1.

7:45-6.4 Prohibited uses within stream corridors of designated streams

(a) The following uses shall be prohibited within a stream corridor of a stream designated in N.J.A.C. 7:45-6.1(a) if a permit from or determination by a municipal agency is required or if the project is a government project:

1. Construction of new structures, buildings and retaining walls;
2. On-site sewage disposal systems;
3. Any solid or hazardous waste facilities, as defined in N.J.A.C. 7:26, including but not limited to sanitary landfills, transfer stations, wastewater lagoons and impoundments;
4. Junk yards, commercial and industrial storage facilities and the open storage of vehicles and materials;
5. Barns, stables, feedlots, barnyards, poultry buildings, and farm waste disposal facilities;
6. Parking facilities and roads that are parallel with the stream; and
7. Removal of native vegetation or actions which result in the death of native vegetation except as necessary in connection with activities in the stream corridor permitted by the Commission.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a), changed N.J.A.C. reference and added "or if the project is a government project" at the end of the introductory paragraph.

7:45-6.5 Conditional uses within stream corridors of designated streams

(a) The following uses shall be permitted within a stream corridor of a stream designated in N.J.A.C. 7:45-6.1(a) if the applicant demonstrates to the satisfaction of the Commission that the proposed use complies with the Master Plan and this chapter:

1. Recreational use, whether open to the public or restricted to private membership, such as parks, camps, picnic areas, golf courses, fishing areas, hiking, bicycle and bridle trails, sport or boating clubs, not to include enclosed structures, but permitting piers, docks, floats or shelters usually found in developed outdoor recreational areas;
2. Outlet installation for sewage treatment plants and sewage pumping stations, and the expansion of existing sewage treatment facilities if the project meets all applicable provisions of this chapter and other Department rules;
3. Private or public water supply wells that have a sanitary seal, flood proofed water treatment facilities, or pumping facilities;
4. Quarrying, excavating, digging, dredging or grading, when incidental to stream cleaning and stream rehabilitation work undertaken to improve hydraulics, or to protect public health;
5. Dams, culverts, bridges and roads that cross the corridor as directly as practical, and that have received approval from the appropriate municipal, county and State agencies having such authority;
6. Sanitary or storm sewers;
7. Detention or retention basins, provided that wetland tree species are planted in any detention basin;
8. Utility transmission lines installed during periods of low stream flow in accordance with soil erosion and sediment control practices approved by the United States Soil Conservation Service and the State Soil Conservation Committee and in a manner which will not impede flows or cause ponding of water;
9. Structures comprising part of a regional flood retention project; and
10. In the event of damage or destruction, in whole or in part, by fire, storms, natural hazards, or other acts of God, reconstruction of any existing structure not resulting in a greater footprint or total area than that of the damaged or destroyed structure and provided that no change in land use results. The reconstruction of a single family dwelling shall not be subject to review by the Commission under this subchapter.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a), changed N.J.A.C. reference in the introductory paragraph, deleted "permitted structures or uses including" following "incidental to" in 4, and added ", provided that wetland tree species are planted in any detention basin" at the end of 7.

7:45-6.6 Preservation of stream corridor

The applicant shall take whatever measures are necessary to assure that areas designated as stream corridors will be preserved and to prevent additional encroachments in the stream corridor likely to occur as a result of the approval granted. Such measures may include easements, deed restrictions, or other measures satisfactory to the Commission.

New Rule, R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-6.7 Local stream corridor ordinance

When the Commission determines that a municipality or county has adopted a stream corridor ordinance that is more stringent than this subchapter, then compliance with the stricter requirements in said ordinance shall be required as a condition of the Commission's Certificate of Approval, the provisions of this subchapter being considered as minima not maxima.

SUBCHAPTER 7. VISUAL AND NATURAL QUALITY IMPACT

7:45-7.1 Submission requirements

(a) The following shall be submitted to the Commission for review of the visual and natural quality impact of all projects:

1. A plan showing the location, type and size or dimension of existing trees with a diameter at breast height of 12 inches or greater, rock masses, and other natural and man-made features, with designations of the features which will be retained in the completed development.
2. A drawing of the structure(s) specifying color and type of surface materials, and showing all elevations visible from the Park.
3. A photograph of each of the existing structure(s) and a drawing showing details of proposed alterations, including notation of colors and materials to be used.
4. A site plan to scale showing the location, dimensions, and arrangements of all open space and yards, type of paving materials, methods to be employed for visual screening, and proposed grades.

7:45-7.2 General standards of review for visual and natural quality impact

(a) The Commission shall review all projects in Zone A to determine if the project is in accord with the goals for the Park as defined in the Park's Master Plan. The visual and natural quality impact review is intended to assure that development within Zone A is not harmful to the character of the environmental types identified in the Master Plan as comprising the Park. The environmental types are:

1. Natural: Sign of man's impact are non-existent or slight;
2. Rural: Natural conditions dominate but unobtrusive signs of man's impact exist;
3. Suburban: A dominant feeling of open space, but that space is chiefly defined by man-made structures;
4. Urban: Enclosure by dense development;
5. Transportation: Park squeezed between roads, railroads, and river or stream;
6. Special Node: Small areas with unique characteristics.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-7.3 Review of visual and natural quality impact of major projects within Zone A

(a) Major projects are discouraged from those portions of Zone A that comprise the Natural, Rural, Transportation, and Special Node Environments of the Park. Where major projects are proposed for the above-cited Review Zone environments, the Commission will not grant approval unless special compensatory measures that mitigate the project's potential for harmful impact on the Park are provided. Examples of such compensatory measures might include, but are not limited to:

1. Increased set-back distances from the Park;
2. At least 40 percent of the total project site be made available for open space for recreation or conservation purposes, and location of that open space near the Park;
3. Extensive landscape development;
4. Development of circulation patterns that direct traffic away from the Park;
5. Noise abatement measures;
6. Improvements to adjoining portions of the Park;
7. Signs or other means of interpreting any historic structures or districts relating to the site.

(b) In those cases where the far banks of the Raritan River and Lake Carnegie are closer than 1000 feet to the center line of the Canal, those banks shall be the limit of Zone A.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).
Amended by R.1999 d.47, effective February 1, 1999.
See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a), added ", but are not limited to" at the end of the introductory paragraph, and added 7.

7:45-7.4 Design standards for review of visual and natural quality impact

(a) Except as provided in N.J.A.C. 7:45-7.3 major and minor projects in Zone A shall be set back from the Park sufficiently far so that the winter visual and natural quality of the Park is not adversely affected. The following setbacks, all of which are from the nearest boundary of the Canal Park, are required unless the Commission approves an alternative:

1. In urban environments there are no minimum setbacks except as may be prescribed by municipal ordinances.
2. In suburban and transportation environments all structures shall be located 200 feet or more from the Park.
3. In natural and rural environments all structures shall be located 250 feet or more from the Park.
4. In any area where existing vegetation does not provide adequate winter screening, the project shall include landscaping, or a greater setback, or both, to protect the Park's visual environment.

(b) Major and minor projects in Zone A shall maintain a reasonable height and scale relationship to nearby structures or vegetation. The following standards will be required:

1. For urban environments, the height of structures may vary according to the height of existing structures that have a visual relationship to the proposed structure.
2. For all other environments, structures shall not be visible above existing tree canopy as viewed from the Park during winter. Where such canopy does not exist, or consists of immature vegetation, structures shall be limited to a height of 40 feet.

(c) For major projects in Zone A the exterior appearances of a project shall be in keeping with the character of the Park's individual environments. The following standards shall apply to the design of the exterior appearance of major projects in Zone A:

1. Colors used shall harmonize with the man-made or natural surroundings of the project and shall be typical of colors found in the Park environment.
2. Building materials and texture shall harmonize with the surrounding man-made and natural materials.

(d) For major and minor projects in Zone A, other visual and natural quality impact standards are as follows:

1. Electric, telephone, cable television, and other such lines and equipment shall be underground or otherwise not visible from the Park. Exception may be requested from the Commission for above-ground terminals, transformers, and similar facilities, and for the extension of service in an existing development.

2. Exposed storage areas, out-buildings, exposed machinery service areas, parking lots, loading areas, utility buildings, and similar ancillary areas and structures shall either be completely concealed from view from the Park or designed according to the standards in this chapter that are applied to other structures.

3. All commercial signs and outdoor advertising structures in excess of two square feet surface area shall comply with the following standards:

- i. In urban and transportation environments, no free-standing signs shall be erected within 200 feet of the Park boundary;
- ii. In natural or rural environments, no sign shall be visible from the Park;
- iii. No signs or other advertising device of any size with moving or moveable parts or with flashing, animated, or intermittent illumination shall be visible anywhere within the Park;
- iv. No free standing sign or other advertising device or part thereof visible from the Park shall be more than 200 feet above ground level.

4. Wherever possible, natural terrains, soils, stones, and vegetation should be preserved. New vegetation, stones, and soils should be native to the environment in which they are placed.

5. Projects should be compatible in scale, height, site-planning and color with any officially designated Federal, State, or local historic site or district.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a), changed N.J.A.C. reference, and inserted "winter" preceding "visual" in the introductory paragraph, and inserted "winter" preceding "screening" in 4; and in (b), inserted "during winter" at the end of the first sentence in 2.

SUBCHAPTER 8. TRAFFIC IMPACT**7:45-8.1 Review of major projects for traffic impact**

The Commission shall review major projects in Zone A of the Review Zone, or major projects in Zone B of the Review Zone that are within one mile of any portion of the Park and have direct access to a road which enters Zone A, for their traffic impact on roads that enter the Park or any part of Zone A. The applicant shall submit a traffic impact study which shows the amount of additional traffic generated by the project and the directions in which this traffic will move. If the Commission determines that the additional traffic will have an adverse impact on the Park, the applicant shall use any feasible planning techniques that will direct any additional traffic away from the Park. If the

Commission is satisfied that there are no feasible planning techniques other than as set forth in the project proposal that can direct any additional traffic away from the Park, the project shall be approved for traffic impact review.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-8.2 Review of road construction, road improvements, and new traffic loads

(a) The Commission shall not approve projects that include new vehicular crossings of the Canal unless the applicant demonstrates to the satisfaction of the Commission that the project conforms with the following goals:

1. A new interstate or similar major road crossing shall relieve congestion on existing local vehicular crossings;
2. Any new local vehicular crossing shall be accompanied by the elimination of an existing local vehicular crossing;
3. The materials, colors, size, and design of the vehicular crossing shall be compatible with the Park;
4. Recreational access to the Park and recreational continuity within the Park shall not be adversely impacted by new crossings;
5. Noise retardation measures shall be utilized wherever appropriate; and
6. Connections between new vehicular crossing roads and existing or new parallel roads shall not increase traffic flow on the parallel roads.

(b) Proposals for new or improved roads in Zone A and Zone B of the Review Zone that are within one mile of any portion of the Park that will substantially increase vehicular traffic to roads adjacent to the Canal will not be approved unless the applicant can demonstrate to the satisfaction of the Commission that:

1. Recreational access to the Park and recreational use of the Park are not impeded;
2. Historic features of the Park are not adversely impacted;
3. The ecological character of the Park is not adversely impacted; and
4. The increased traffic will not have a visual or noise impact on the Park.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).
Amended by R.1999 d.47, effective February 1, 1999.
See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a)4, substituted "not be adversely impacted" for "be accommodated" following "shall".

SUBCHAPTER 9. WAIVER OF REVIEW OF GOVERNMENTAL AND PRIVATE PROJECTS

7:45-9.1 Purpose

This subchapter establishes procedures and standards pursuant to which the Commission may waive strict adherence to the review procedure or to a specific requirement of this chapter. Waivers granted pursuant to this subchapter are intended to provide relief where strict adherence to the review procedure or to a specific requirement of this chapter will create an extreme economic hardship or where the waiver is necessary on the grounds that the project serves a compelling public need or where a specific impact review is not necessary.

New Rule R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Text on waiver of storm drainage and water quality impact review recodified to N.J.A.C. 7:45-11.6.

7:45-9.2 Procedure

(a) An applicant who wants to obtain a waiver shall submit a written request for waiver along with all materials required to be submitted for a complete project application including the materials that are required to be submitted for the specific review for which a waiver is requested. If during review of a project application it appears necessary to obtain a waiver, the applicant may apply for a waiver. Application for waiver shall stay the time period that may be set forth in this chapter for review of the project application pending resolution of the waiver request.

(b) The Commission shall determine whether to deny, approve or approve with conditions an application for a waiver from project review within 45 days after the Commission receives a complete waiver application. The Commission shall issue a notice of decision containing its determination on the waiver application. The notice of decision shall be issued in accordance with N.J.A.C. 7:45-2.8.

(c) The notice of decision shall advise the applicant and municipal reviewing agency and those affected parties who specifically requested notice of the Commission's decision of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The request for a hearing shall be submitted and acted on pursuant to N.J.A.C. 7:45-4.

New Rule R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Text on waiver of visual and natural quality impact review recodified to N.J.A.C. 7:45-11.7.

Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-9.3 Waiver of review of governmental and private projects due to extreme economic project hardship or compelling public need

(a) The Commission may waive review or waive any requirement of this chapter, upon a clear and convincing demonstration by the applicant that strict adherence to the review procedure, or to a specific requirement of this chapter, would not be practical and would result in extreme economic hardship or extraordinary and unjustified expense, or would conflict with a compelling public need, and that the project will not impair the intent and purpose of the Master Plan or this chapter.

(b) The Commission shall use the following standards in reviewing economic hardship waiver applications:

1. The literal enforcement of this chapter would result in an extreme economic hardship, as distinguished from a mere inconvenience, because of the particular physical surroundings, shape or topographical conditions of the property involved. The necessity of acquiring additional land to meet the setback requirements of this chapter shall not be considered an extreme economic hardship unless the applicant can demonstrate that there is no adjacent land which is reasonably available; and

2. An applicant shall be deemed to have established the existence of an extreme economic hardship only if the applicant demonstrates, based on specific facts, that the subject property is not capable of yielding a reasonable return if its present use is continued, or if it is developed as authorized by the provisions of this chapter and that this inability to yield a reasonable return results from unique circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the immediate vicinity;

ii. Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and

iii. Are not the result of any action or inaction by the applicant or the owner or his predecessors in title.

(c) An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, that:

1. The proposed project will serve an essential public health or safety need;

2. The public health and safety require the requested waiver;

3. The proposed use is required to serve existing public health or safety needs;

4. There is no alternative available to meet the established public health or safety need;

5. The granting of the waiver will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, will not endanger public safety or result in substantial impairment of the resources of the Park;

6. The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the Master Plan or the Act; and

7. The waiver granted is the minimum relief necessary to relieve the compelling public need.

New Rule R.1990 d.106, effective February 5, 1990.

See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Text on waiver of reconstruction or minor alteration review recodified to N.J.A.C. 7:45-11.8.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

Amended by R.1999 d.47, effective February 1, 1999.

See: 30 N.J.R. 3729(a), 31 N.J.R. 402(a).

In (a), inserted “, would not be practical and” preceding “would result”; and in (c)6, inserted a reference to the Master Plan.

7:45-9.4 Waiver of stream corridor impact review of governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for stream corridor impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project will not have an adverse impact upon the stream corridor's present ability to function as a buffer for the stream's ecological health and as a natural area; or

2. The project incorporates environmentally sound site planning techniques, or preserves other natural areas, either of which can be demonstrated to have an equivalent effect as would compliance with this chapter.

New Rule R.1990 d.106, effective February 5, 1990.

See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Text on hardship waiver recodified to N.J.A.C. 7:45-11.9.

7:45-9.5 Waiver of traffic review for private and governmental projects

Private and governmental projects otherwise subject to review by the Commission for traffic impact will be waived from such review if the applicant establishes to the satisfaction of the Commission that the project will not have a direct traffic impact on the Park.

New Rule R.1990 d.106, effective February 5, 1990.

See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

Text on exclusivity of waiver recodified to N.J.A.C. 7:45-11.10.

Amended by R.1994 d.100, effective February 22, 1994.

See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-9.6 Waiver of storm drainage and water quality impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for storm drainage and water

quality impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project will not adversely affect the surface waters of the Park under either storm or normal conditions; and
2. The groundwater effects produced by the project are unlikely to measurably affect the quality of the surface waters or groundwaters of the Park.

Recodified by R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).

7:45-9.7 Waiver of visual and natural quality impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for visual and natural quality impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that visual screening will continue to exist in the future, and:

1. Wherever possible, natural terrains, soils and vegetation are to be preserved, and new vegetation and soils are to be native to the environment in which they are placed; and
2. The topography of the land screens the entire project; or
3. Existing structures screen the entire project; or
4. Vegetation screens the entire project during the winter season.

Recodified by R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).
Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-9.8 Waiver of reconstruction or minor alteration review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for reconstruction or minor alterations may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project consists solely of the reconstruction of a previously existing structure which was partially destroyed by fire, flood, or other natural disaster, and that the reconstruction will not increase the use or the exterior dimensions of the structure. Structures which are totally destroyed by such natural disasters are not eligible for waiver and remain subject for review; or

2. The project consists solely of alterations to an existing structure and will not increase the use or the exterior dimensions of the structure.

Recodified by R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).
Amended by R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).

7:45-9.9 Exclusivity of waiver

Waiver of review for a specific impact of a governmental or private project does not constitute a waiver of review for any other impact pursuant to this chapter.

Recodified by R.1990 d.106, effective February 5, 1990.
See: 21 N.J.R. 828(a), 22 N.J.R. 383(b).
Repeal and Recodification, R.1994 d.100, effective February 22, 1994.
See: 25 N.J.R. 4836(b), 26 N.J.R. 1153(a).
Repealed text at former 7:45-11.9, Hardship waiver for governmental and private projects.

SUBCHAPTER 10. SEVERABILITY

7:45-10.1 Severability

If any 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.