

3. If a lot owner who has received a notice of access modification initiates the sale of the lot before the Department modifies the access permit, the lot owner shall provide the lot purchaser with a copy of the notice of the pending modification. The Department shall not be responsible for providing notice to a lot purchaser.

4. The lot owner shall respond to the Department in writing within 30 days of receipt of the notice, advising the Department of either the acceptance of the modification plan or the appeal of the plan. The Department shall deem the lot owner's failure to respond to the notice as a waiver of the owner's opportunity for an informal meeting and informal hearing.

5. Upon receipt of an appeal of a modification plan, the Manager of the Bureau of Major Access Permits shall schedule an informal meeting with the lot owner to resolve any differences. Thereafter, the Manager of the Bureau of Major Access Permits shall issue a decision in writing within 30 days of the meeting and shall so notify the lot owner. The lot owner shall be further advised that, if the lot owner does not agree with the decision, the lot owner may submit an appeal to the Director, Division of Design Services, within 30 days.

6. The Director, Division of Design Services, shall schedule an informal hearing within 10 days of receipt of the lot owner's appeal. The Director, Division of Design Services, may conduct the hearing or designate a Bureau Manager as hearing officer. At the hearing, the lot owner will be accorded an opportunity to present further information regarding objections to the modification plan.

7. In reaching the final agency decision, the Director, Division of Design Services, shall consider the information presented at the hearing and the recommendation of the hearing officer if designated and the criteria set forth in the Act and these regulations, the lot owner's right of reasonable access to the general system of streets and highways in the State and the public's right and interest in a safe and efficient highway system. The Director, Division of Design Services, shall render the final agency decision, with reasons, within 30 days of the informal hearing and so notify the lot owner, in writing.

8. The Department shall issue permits to the owners of lots with modified access.

(d) Revocation of access shall be as follows:

1. This is restricted to eliminating direct ingress, egress, or ingress and egress and providing access to a street, highway, easement, service road or common driveway other than the subject State highway.

2. For a lot that is used for purposes more intense than it is zoned for, the existing use shall be used to classify which revocation standards apply. Prior to revocation, the Department shall determine that the lot has reasonable access to the general system of streets and

highways in the State, other than its State highway access, and that:

i. For a lot zoned or used for commercial purposes, has access onto any parallel or perpendicular street, highway, easement, service road, or common driveway, which is of sufficient design to support commercial traffic to the site, and is situated so that motorists will have a convenient, direct, and well-marked means of reaching the site and returning to the State highway. Commercial purposes include, but are not limited to, wholesale facilities, retail facilities, service establishments, office buildings, research buildings, and residential parcels of at least 25 acres and at least four residential units per acre;

ii. For a lot zoned or used for industrial purposes, has access onto any improved public street, highway, access road, or easement across an industrial access road, which is of sufficient design to support necessary truck and employee access as required by the industry;

iii. For a lot zoned or used for residential or agricultural purposes (except as provided in (d)2i above), has access onto any improved public street or highway; and

iv. In making the determinations required in (d)2i and ii above, the Department shall evaluate the lot under the conditions that exist as of the date of the notice provided pursuant to (d)3i below.

3. The Department shall provide to the lot owner and all lessees, at least 90 days prior to any hearing:

i. A notice of the Department's intention to revoke an access permit;

ii. A plan depicting reasonable alternative access and signing, as described in (d)9 below; and

iii. A plan depicting any improvements the Department will make to provide the access.

4. The Department shall provide the lot owner with written notice of the owner's right to request a hearing in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Any such request must be made within 30 days of the lot owner's receipt of the notice of the Department's intention to revoke an access permit. The Department shall deem the lot owner's failure to respond to the notice as a waiver of the owner's right to a hearing.

5. If a lot owner who has received a notice of access revocation pursuant to (d)3i above initiates the sale of the lot or leases to a new tenant before the Department revokes the access permit, the lot owner shall provide the lot purchaser or new tenant with a copy of the notice of the pending revocation. The Department shall not be responsible for providing notice to a lot purchaser or new tenant.

6. The Department may hold an informal meeting with the lot owner to resolve any differences.

7. The Department shall file a copy of the plan with the municipal clerk and the planning board secretary of the municipality in which the lot is located. If the alternative access is to a county road, the Department shall also send a copy of the plan to the county clerk and county planning board.

8. The Department shall provide all necessary assistance in the establishment of the alternative access. Such assistance shall include, but not be limited to, the costs and expenses associated with:

- i. Removal of existing driveways;
- ii. Construction of alternative access;
- iii. Engineering design;
- iv. On-site circulation improvements to accommodate the changes in access;
- v. Landscaping to replace that disturbed by the changes in access;
- vi. Replacement of directional and identifying signs as provided in (d)9 below;
- vii. Acquisition of lands or rights or interests in lands to accommodate the changes in access; and
- viii. Acquisition of any other right required to accommodate the changes in access.

9. For property meeting the definition of commercial property in (d)2i above, the Department shall erect on the State highway and on connecting local highways suitable signs directing motorists to the new access location. When the Department provides signing for alternative access, it shall use generic, white messages on green or blue background signs of no more than eight square feet (0.75 square meters). The signing shall be placed in locations designated by the Commissioner and shall be maintained for a period of one year after the opening of the alternative access, after which time the Department may remove the signs or replace them with general signs, such as "Business District," "Service Road," or "All Services."

10. The Department shall provide the necessary roadway pavement structure and road widths meeting municipal standards for municipal roads and county standards for county roads for local roads traversed by traffic using the alternative access in lieu of the State highway access. The Department shall administer this provision as shown in Appendix H, incorporated herein by reference. The Department shall also provide a level of service to accommodate existing traffic plus site-generated traffic meeting the requirements of N.J.A.C. 16:47-4.24 through 4.29. The Department shall not have responsibility for maintaining these local roads.

11. The Department shall issue permits to the owners of lots with alternative access.

(e) Permits issued by the Department for the activities in (a) through (d) above shall be at no cost to the lot owners.

Amended by R.1993 d.210, effective May 17, 1993.

See: 25 N.J.R. 903(a), 25 N.J.R. 1990(a).

Revised (a) and (b).

Amended by R.1995 d.107, effective February 21, 1995.

See: 26 N.J.R. 2549(a), 27 N.J.R. 736(c).

Amended by R.1997 d.165, effective April 7, 1997.

See: 28 N.J.R. 3731(a), 28 N.J.R. 4383(a), 29 N.J.R. 1353(a).

Substantially amended the section.

Amended by R.2002 d.22, effective January 22, 2002.

See: 33 N.J.R. 2043(a), 34 N.J.R. 507(a).

In (d)2, added iv.

Case Notes

It was reasonable for Division of Design Services to modify service station's state highway access by closing one of two existing egresses fronting highway and by widening remaining access point by more than five feet, since Division determined that such modification would represent substantial public benefit and that it would enable service station to continue operation. In re I/M/O Route 206 at New Amwell Road, Block 161, Lot 13B (Hillsborough), 322 N.J.Super. 345, 731 A.2d 56 (N.J.Super.A.D. 1999).

16:47-4.34 Fairshare financial contributions

(a) The Department may require fair-share financial contributions towards the cost of constructing capacity improvements to the State highway system necessitated by traffic attributable to the development of the lot at those study locations determined in accordance with N.J.A.C. 16:47-4.36 where the LOS violates the standards set forth in N.J.A.C. 16:47-4.24 through 4.29. These improvements may include roadway and structure widenings, frontage roads, intersection improvements, structures, reverse frontage roads, and alternative access. Alternately, the Department may permit the applicant to construct the improvement at the applicant's expense and under Department supervision.

(b) Those improvements which benefit only the applicant shall be entirely the applicant's responsibility and are not considered in the fair share determination. Examples of this are acceleration and deceleration lanes for access points, left turn slots which only provide access to a site, and traffic signals located at the applicant's driveways.

(c) If a lot falls within the boundaries of a designated Transportation Development District (TDD) and the development is subject to a TDD fee assessment, then the Department can only require financial contributions towards the cost of constructing capacity improvements to the State highway system outside the TDD boundaries.

(d) Applicants are responsible for the fair share of the cost of mitigation at each study area location where a LOS violation occurs as determined by analysis pursuant to N.J.A.C. 16:47-4.36.

$$\text{Fair Share Proportion} = \frac{\text{LOS Violation Component}}{\text{Capacity Increase}}$$

The LOS violation component is comprised of those site generated trips which violate the LOS standards at study locations determined in accordance with N.J.A.C. 16:47-4.36. The acceptable component is comprised of those site-generated trips which do not violate the LOS standards.

(f) Mitigation at each location pursuant to (a) above shall add capacity sufficient to accommodate the anticipated increase in traffic between build and no-build conditions at the time the access opens without violations of the LOS standards in N.J.A.C. 16:47-4.24 through 4.29. Mitigation shall also be compatible with, but shall not exceed, the desirable typical section for the State highway segment as shown in Appendix B.

(g) The capacity increase created by mitigation shall be equal to the capacity after mitigation minus the capacity before mitigation as reflected in the following formula: Capacity Increase = Capacity After Mitigation—Capacity Before Mitigation. “Capacity” means the maximum traffic volume possible with LOS E. The only exceptions are non-State highway approaches to signalized intersections, which shall not be at capacity until a lane group V/C ratio equals 1.2. Capacity before mitigation will be that of the analysis point’s existing configuration under prevailing traffic conditions, such as peak-hour factor and heavy vehicle factor, given the pattern of existing traffic. Capacity after mitigation will be that of the analysis point’s proposed (mitigated) configuration under prevailing traffic conditions, such as peak-hour factor and heavy vehicles factor, given the pattern of existing traffic combined with site traffic. When more than one measure of level of service is possible at an analysis point, such as the various movements at an intersection, then the most sensitive measure shall determine the capacity. Traffic volumes for all movements shall be factored by a constant so that all movements will remain a fixed percentage of the total volume at the analysis point until the maximum attainable volume is achieved without the capacity of any movement being exceeded. The sum of the traffic volumes of all movements is the capacity for that analysis point. At signalized intersections where the level of service of each movement is not a direct function of the traffic volume of another movement, each lane group may be factored independently to determine its capacity, and the lane group capacities added to determine the capacity of the entire intersection. In factoring the lane groups, the traffic volumes should not exceed those which can be reasonably expected to occur at the entire intersection.

$$\text{Capacity Increase} = \text{Capacity After Mitigation} - \text{Capacity Before Mitigation}$$

(h) The fair share proportion at a location shall be equal to the LOS violation component divided by the capacity increase, as reflected in the following formula:

(i) The cost of mitigation at a location shall be the cost for the Department to provide the mitigation. This includes:

1. Design of the mitigation;
2. Right-of-way appraisal and acquisition;
3. Construction of the mitigation;
4. Management of the construction; and
5. Environment cleanup, permits and mitigation.

$$\text{Mitigation Cost} = \text{Sum of the above mitigation elements}$$

(j) The fair share at a location shall be equal to the fair share proportion times the cost of the mitigation, as reflected in the following formula: Fair Share = Fair Share Proportion x Mitigation Cost.

(k) The fair-share financial contribution shall be equal to the sum of the applicant’s fair shares at all locations where level of service violations occur. If, in the Department’s sole discretion, it does not anticipate that the mitigation identified for a location in (f) above will be implemented within 15 years of the date of the permit, then the applicant shall have no fair share responsibility at that location. If the application qualifies for reduced fees as set forth in N.J.A.C. 16:47-4.6(b), then the total fair share for the residential component of the lot shall be reduced by the same proportion as the low and moderate income units to the total number of units covered by the application.

(l) If the Department permits the applicant to construct highway improvements under (a) above, then these improvements are to be at locations, studied in accordance with N.J.A.C. 16:47-4.36, where LOS violations occur. In determining the highway improvement to be constructed as a condition of permit approval, the Department shall consider the needs of the applicant and the public.

(m) The Department shall hold all fair-share financial contributions in a designated account which shall identify the fair share amount for each location. Funds may be expended on any of the activities listed in (i) above for any locations identified in (d) above. The Department and the applicant may agree to apply the fair share financial contribution to improvements at less than all of the identified locations. The Department shall refund any contribution and accrued interest applicable to the improvement of an identified location if the improvement is not implemented within 15 years. The refund shall be made to the owner of the lot at the end of the 15 years.

(n) If the Department accepts a right-of-way dedication, the value of dedicated lands shall be a credit against the fair share financial contribution.

(o) The Department will not require fair share financial contributions towards the cost of highway improvements which the Department does not expect will be constructed within 15 years. However, the Department may not approve applications if it finds unacceptable the condition that would be caused by the addition of site traffic to a location which will not be improved within 15 years.

(p) The Department may release fair share financial contributions and accrued interest, or any portion thereof, to any federal, state, regional, or local entity, or to any person or private entity as the Department deems appropriate for the implementation of highway improvements at locations identified in (d) above.

Petition for Rulemaking.

See: 34 N.J.R. 2343(b).

Extension of operative date of adopted amendments at 34 N.J.R. 507(a) from October 19, 2002 to May 1, 2003.

See: 34 N.J.R. 3530(a).

Law Review and Journal Commentaries

DOT—Highway Access Permits—Relocation Costs—Transportation—Utilities. P.R. Chenoweth, 134 N.J.L.J. 50 (1993).

Case Notes

Department condition of road-widening for granting highway-access permit was not sufficient to trigger statute requiring Department to pay costs of relocating facilities. *Pine Belt Chevrolet, Inc. v. Jersey Cent. Power and Light Co.*, 132 N.J. 564, 626 A.2d 434 (1993).

Road-widening condition imposed by Department was permissible exercise of Department's police powers. *Pine Belt Chevrolet, Inc. v. Jersey Cent. Power and Light Co.*, 132 N.J. 564, 626 A.2d 434 (1993).

16:47-4.35 Waivers

(a) No waivers or other relief from design standards or other provisions of N.J.A.C. 16:47-3 and 4 may be granted unless the waiver can be granted without substantial detriment to the safety and operation of the highway and without substantially impairing the intent and purpose of the Act and this Access Code. The Department will not grant waivers from fees, but may waive application requirements or the requirements for applicants.

(b) If an applicant wishes to seek a waiver, a request must be submitted as an attachment to the permit application. A request for waiver form (MT-159) shall be prepared by the applicant. The request for waiver shall state reasons why a waiver is appropriate and include documentation to support the waiver.

(c) If a waiver is granted, the approval of the waiver will be incorporated in the conditions of the permit.

(d) Possible bases for waiver requests include, but are not limited to:

1. Existing substandard conditions;
 2. Existing social, economic or environmental constraints;
 3. Unique character of a lot;
 4. Unreasonableness of strict application of the Access Code under particular circumstances;
 5. A boundary such as urban/rural, speed limit, or access classification falling within the frontage of the lot;
 6. A lot within an urban enterprise zone;
 7. Conflict between the requirements of the Access Code and the requirements of:
 - i. The Pinelands Commission or the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;
 - ii. CAFRA;
 - iii. The Freshwater Wetlands Act, N.J.S.A. 13:9B-1 et seq.;
 - iv. The Stream Encroachment Act, N.J.S.A. 58:16A-50 et seq.;
 - v. Federal Flood Hazard Zone Regulations;
 - vi. Delaware River Basin Commission;
 - vii. Delaware and Raritan Canal Commission; and
 - viii. Meadowlands Commission.
 8. Lower access classification or capacity of the State highway than that applicable to an intersecting county or municipal street;
 9. Municipal, county or other approving agency imposition of conditions beyond the control of the applicant. If this occurs during the Department application process and the applicant provides documentation of these conditions, the Department will not require a new application and fees as specified in N.J.A.C. 16:47-4.8(h), 4.11(h) and 4.13(i);
 10. Low or moderate income housing, proposed pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., or under court settlement; and
 11. The applicant can provide evidence that the major or minor type of permit which the Department would determine pursuant to N.J.A.C. 16:47-4.4 is inappropriate. This may include alternative evidence for traffic generation, pursuant to N.J.A.C. 16:47-4.4(f), which differs from the information in Appendix E.
- (e) Any waiver granted shall only be considered a waiver of a particular standard or provision. It shall not constitute an approval of an application.

(f) The Department shall not grant a waiver associated with N.J.A.C. 16:47-3.5(a)4 which would reduce the spacing distance to less than the distance required at five miles per hour (approximately 8 kph) less than the posted speed limit.