

iii. A letter signed by the chief elected local official of the applying county or municipality, a letter signed by the chief executive officer of the applying nonprofit organization, or a letter signed by the head of the applying State agency confirming the intent of the State, county, municipality, or nonprofit organization to apply for a historic preservation grant for the property.

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

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

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

1. Determine whether the property is eligible for listing in the New Jersey Register under the Criteria for Evaluation set forth in N.J.A.C. 7:4-2.3; and

2. Notify the applicant in writing whether or not the State Historic Preservation Officer has determined that the property is eligible for listing in the New Jersey Register.

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

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

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

fication of eligibility shall be submitted with the National Register Nomination Form.

SUBCHAPTER 6. STATE FUNDS

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

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

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

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

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

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

7:4-7.1 Application procedure for encroachment authorization

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

1. Consult with the Department for the purpose of defining the boundaries of the area of the undertaking's potential impact;

2. Consult the latest edition of the New Jersey Register to determine if there are any registered properties within the area of the undertaking's potential impact; and

3. Contact the Department and determine if other properties within the area of the undertaking's potential impact have been listed in the New Jersey Register since the most recently published list. Public projects or actions for which acquisition or construction contracts have

been let prior to listing on the New Jersey Register shall not require review and approval.

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

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

(d) The application shall be prepared by the State, county, municipality or agency or instrumentality thereof planning the undertaking or its authorized representative on forms available from the Department and shall include: maps, photographs, plans, specifications, and proposed agreements sufficient to completely describe the planned undertaking. If demolition of all or a substantial portion of a property is proposed, the application shall include a structural assessment and an evaluation of whether the property could be reasonably repaired, to be prepared by an architect or engineer with demonstrated experience with historic properties. In addition, the application shall include a complete list of owners of registered properties that would be directly affected by the undertaking and a complete list of local historical societies and historic preservation commissions in the area of the undertaking's potential impact. The application shall also include a list of all affected local government units, any agencies or instrumentalities thereof concerned with historic preservation, and any Statewide organization and local organization specifically concerned with historic preservation in the area of the undertaking's potential impact. The list of property owners shall be the list of private and public property owners (including right-of-way owners) named in official municipal tax records and maps as of the date of the application's submission and shall be notarized by the appropriate municipal official. An application for relocating property on the New Jersey Register shall also include the information and documentation required in N.J.A.C. 7:4-3.2(c).

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

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

In (d), inserted second and fourth sentences.

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

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

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

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

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

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

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

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

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

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

- i. The applicant;
- ii. The chief elected local official of the municipality in which the proposed undertaking would occur;
- iii. Two major circulation newspapers, including a major circulation newspaper in the area of the municipality in which the proposed undertaking would occur;
- iv. Local historical societies and historic preservation commissions, as listed by the applicant in the application for authorization pursuant to N.J.A.C. 7:4-7.1(d);
- v. All affected local government units, any agencies or instrumentalities thereof concerned with historic preservation, and any recognized organization specifi-

cally concerned with historic preservation in the State and in the area of the undertaking's potential impact as listed by the applicant in the application for authorization pursuant to N.J.A.C. 7:4-7.1(d);

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

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

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

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

- i. The public benefit of the proposed undertaking;
- ii. Whether or not feasible and prudent alternatives to the encroachment exist; and
- iii. Whether or not sufficient measures could be taken to avoid, reduce or mitigate the encroachment.

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

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

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

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

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

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

iii. Deny the application for project authorization temporarily based on such factors as need for additional information, exploration of additional alternatives for avoidance or mitigation of the encroachment, damage, destruction or other adverse effects. The applicant shall respond to the Department within 60 days from the date of issuance of a temporary denial. In the event that no response is received by the Department within 60 days, the Commissioner shall deny the application. If the applicant submits a complete response including all information requested by the Department,

it shall be within the discretion of the Department as to refer additional information to the Historic Sites Council, and the Department shall make a final determination within 60 days after receipt of the response; or

iv. Deny the application for project authorization with specific reasons therefor.

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

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

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

7:4-7.3 Emergency undertakings

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

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

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

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

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

(b) An undertaking that would otherwise be found to constitute an encroachment pursuant to (a) above may be considered by the Department as not being an encroachment when:

1. The registered property is of value only for its potential contribution to archaeological, historical, or ar-

chitectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

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

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

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

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