



*SEVENTH EDITION*

**REGULATIONS FOR THE REVIEW ZONE OF  
THE DELAWARE AND RARITAN CANAL STATE PARK**

NOTE: THIS IS A COURTESY COPY OF THIS  
RULE. THE OFFICIAL VERSION WILL BE PUBLISHED  
IN THE JUNE 1, 2009 NEW JERSEY REGISTER. SHOULD  
THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT  
AND THE OFFICIAL VERSION OF THE RULE, THE  
OFFICIAL VERSION WILL GOVERN.

**New Jersey Department of Environmental Protection**

## CONTENTS

<b>SUBCHAPTER 1</b>	<b>GENERAL INFORMATION</b>	<b>1</b>
1.1	Purpose	1
1.2	Forms and information	1
1.3	Definitions	2
1.4	Master Plan of the Delaware and Raritan Canal State Park	6
<b>SUBCHAPTER 2</b>	<b>APPLICABILITY</b>	<b>8</b>
2.1	Jurisdictional determination, approval, authorization or waiver requirements	8
2.2	Jurisdictional Determination	8
2.3	Scope of review for approvals, authorizations and waivers	8
<b>SUBCHAPTER 3</b>	<b>APPLICATION AND REVIEW PROCEDURES FOR INDIVIDUAL APPROVALS</b>	<b>10</b>
3.1	General provisions	10
3.2	Application for review of a private or governmental project other than one sponsored by a State agency	10
3.3	Pre-application conferences	10
3.4	Review of decisions regarding private projects and governmental projects other than projects sponsored by a State agency	11
3.5	Review of and decisions regarding projects sponsored by a State agency	12
3.6	Review of permits issued by a State department or agency	12
3.7	Notice of decision	13
<b>SUBCHAPTER 4</b>	<b>INDIVIDUAL APPROVALS</b>	<b>14</b>
4.1	Issuance of individual approvals	14
4.2	Modification of an individual approval	15
<b>SUBCHAPTER 5</b>	<b>GENERAL PROVISIONS FOR GENERAL PERMITS</b>	<b>16</b>
5.1	Promulgation of general permits	16
5.2	Using a general permit to authorize specific projects	16
5.3	Conditions that apply to all general permit authorizations	18
5.4	Use of multiple general permit authorizations	18
5.5	Modification of a general permit authorization	18
<b>SUBCHAPTER 6</b>	<b>GENERAL PERMITS</b>	<b>20</b>
6.1	General Permit 1 – maintenance and repair of existing features	20
6.2	General Permit 2 - single family residential additions	20
<b>SUBCHAPTER 7</b>	<b>ADJUDICATORY HEARINGS</b>	<b>21</b>
7.1	Request for an adjudicatory hearing	21

<b>SUBCHAPTER 8</b>	<b>STORMWATER RUNOFF AND WATER QUALITY</b>	
<b>IMPACT REVIEW</b>		<b>23</b>
8.1	Purpose and scope of review	23
8.2	Submission requirements	23
8.3	Specific standards for outfalls	23
8.4	Specific nonstructural stormwater management strategies	24
8.5	Specific recharge standards	25
8.6	Specific stormwater runoff quantity standards	26
8.7	Specific water quality standards	26
8.8	Specific stormwater management maintenance requirements	28
<b>SUBCHAPTER 9</b>	<b>STREAM CORRIDOR IMPACT</b>	<b>30</b>
9.1	Scope of review	30
9.2	Submission requirements	30
9.3	Prohibited uses within stream corridors	30
9.4	Conditional uses within stream corridors	31
9.5	Preservation of stream corridor	32
9.6	Local stream corridor ordinance	32
<b>SUBCHAPTER 10</b>	<b>VISUAL, HISTORIC AND NATURAL QUALITY IMPACT</b>	<b>33</b>
10.1	Submission requirements	33
10.2	General standards of review for visual, historic and natural quality impact	33
10.3	Review of visual, historic and natural quality impact of projects within Zone A	33
10.4	Design standards for review of visual, historic and natural quality impact	34
<b>SUBCHAPTER 11</b>	<b>TRAFFIC IMPACT</b>	<b>36</b>
11.1	Review of major projects for traffic impact	36
11.2	Review of road construction, road improvements, and new traffic loads	36
<b>SUBCHAPTER 12</b>	<b>WAIVER OF STRICT ADHERENCE TO REVIEW STANDARDS</b>	<b>37</b>
12.1	Purpose	37
12.2	Procedure	37
12.3	Waiver of review standards due to extreme economic hardship or compelling public need	38
12.4	Waiver of stream corridor impact standards	39
12.5	Waiver of traffic impact standards	39
12.6	Waiver of Stormwater Runoff and Water Quality Impact Standards	39
12.7	Waiver of Visual, Historic and Natural Quality Impact Standards	40
12.8	Waiver of Reconstruction or Minor Alteration Review	41
12.9	Exclusivity of waiver	41
<b>SUBCHAPTER 13</b>	<b>FEES</b>	<b>42</b>
13.1	General fee provisions	
13.2	Fee schedule	42
<b>SUBCHAPTER 14</b>	<b>SEVERABILITY</b>	<b>44</b>
14.	Severability	44

**REGULATIONS FOR THE REVIEW ZONE OF  
THE DELAWARE AND RARITAN CANAL STATE PARK**

**SUBCHAPTER 1 GENERAL INFORMATION**

**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 ensure 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, historic, and recreational resources of the Park and its environs 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 Forms and information**

- (a) Application forms or other information related to this chapter may be obtained from the Commission as follows:
1. Through the Commission's website at [www.dandrcanal.com](http://www.dandrcanal.com); or by contacting the Commission at:

D&R Canal Commission  
P.O. Box 539  
Stockton, NJ 08559  
609-397-2000  
Fax: 609-397-1081

- (b) Application forms, correspondence, and other materials shall be submitted to the address in (a) above, except that courier and hand deliveries shall be delivered to:
- D&R Canal Commission  
33 Risler Street  
Stockton, NJ 08559
- (c) Application forms, correspondence, or other materials sent or delivered to an address other than those in (a)1 and (b) shall not be deemed to have been received for the purposes of calculating application review deadlines or other time periods under this chapter.

### **7:45-1.3 Definitions**

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

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

“Administrative Procedure Act” or “APA” means N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

“Commission” means the Delaware and Raritan Canal Commission.

“Compaction” means the increase in soil bulk density.

“Department” means the Department of Environmental Protection.

“Design engineer” means a person professionally qualified and duly licensed in New Jersey to perform engineering services that may include, but not necessarily be limited to, development of project requirements, creation and development of project design and preparation of drawings and specifications.

“Disturbance” means construction or other human activity that disturbs the surface of the land, or the soil below the land surface, including, but not limited to, clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling, timber harvesting activities, road maintenance activities, mineral extraction, and the moving, depositing, stockpiling, or storing of soil, rock or earth materials.

“Drainage area” means a geographic area within which stormwater runoff, sediments, or dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

“Erosion” means the detachment and movement of soil or rock fragments by water, wind, ice or gravity.

“General permit” means an authorization to approve a project for which the terms and conditions are established in a rule promulgated under this chapter at N.J.A.C. 7:45-6, and for which a person must submit an application for authorization.

“Governmental project” means the undertaking of a public improvement, disturbance, development, 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 that involves no change of use.

“Impervious surface” means a surface that has been covered with a layer of material so that the surface is highly resistant to infiltration by water. Examples of impervious surface include but are not limited to asphalt, concrete, graveled surfaces, metal, synthetic turf, buildings, sidewalks, driveways, tennis courts, swimming pools and most structures.

“Individual approval” means an approval issued by the Commission after application and review is made in accordance with N.J.A.C. 7:45-2 through 4.

“Infiltration” is the process by which water seeps into the soil from precipitation.

“Major project” means a project that results in one or more of the following:

1. In Zone A and Zone B, the cumulative coverage since January 11, 1980, of one quarter acre of land with impervious surface; or
2. In Zone A and Zone B, the disturbance of one acre or more of land; or
3. In Zone A and Zone B, the disturbance of one half acre or more of existing impervious surface or significantly disturbed areas, for the purposes of construction, if the project site either:
  - i. Drains into the Canal; or
  - ii. is located within a drainage area of a water course that discharges into the Canal from the point where the water course enters into the Canal up to the point at which the water course drains less than 50 acres, including drainage areas of any tributary to those water courses up to the point at which the tributary drains less than 50 acres; or
4. In Zone A, any structure with a height greater than 40 feet above existing grade.

“Master Plan” means the Delaware and Raritan Canal State Park Master Plan, as described at N.J.A.C. 7:45-1.4, consisting of the following six 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)
5. Development, Acquisition and Management Plan (January, 1996); and
6. Development Plan for the Delaware and Raritan Canal State Park: 2003-2013.

“Minor project” means:

1. Regarding Zone A, a project that is not a major project.
2. Regarding Zone B, only major projects are reviewed in Zone B.

“Mitigation” means action that is considered on a case-by-case basis for the potential loss of or potential adverse impact on a particular natural, historic or recreational resource. In general, mitigation should be similar in type and location to the resource proposed to be disturbed, destroyed, or otherwise adversely impacted. The Commission will, however, consider proposals for mitigation that differ in type and/or location from the impacted resource, provided the mitigation would more than offset the potential adverse impact and would contribute toward meeting the goals of the Master Plan and this chapter.

“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.

“One hundred-year flood line” means the line that 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 equaled or exceeded in any one year.

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

“Person” means any individual, corporation, company, partnership, firm, association, political subdivision of this State and any state, interstate or Federal agency.

“Pollutant” means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, medical wastes, radioactive substance (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. §§2011 et seq.)), thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, agricultural, and construction waste or runoff, or any other residue discharged directly or indirectly to the land, ground waters or surface waters of the State, or to a domestic treatment works. “Pollutant” includes both hazardous and nonhazardous pollutants.

“Preserved land” means land that is permanently protected from development with a perpetual conservation or open space easement or fee ownership, held by a Federal, State, or local government or nonprofit conservancy organization, whereby such land is dedicated and bound to natural resource, forestry, wildlife, passive recreation, historic, cultural, or open space purposes, or to sustain water quality and natural resource values.

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

“Recharge” means the amount of water from precipitation that infiltrates into the ground and is not evapotranspired.

“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. If any part of a project site is within Zone A then the entire project shall be considered to be in Zone A; 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. It can also be viewed on the Department’s digital map at [www.state.nj.us/dep](http://www.state.nj.us/dep). 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.

“Road” means a cartway for motorized vehicles that is under governmental jurisdiction.

“Sediment” means solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

“Soil” means all unconsolidated mineral and organic material of any origin.

“Stormwater” means water resulting from precipitation that runs off the land’s surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities or conveyed by snow removal equipment.

“Stormwater management basin” means an excavation or embankment and related areas designed to retain stormwater runoff. A stormwater management basin may either be normally dry (that is, a detention basin or infiltration basin), retain water in a permanent pool (a retention basin), or be planted mainly with wetland vegetation (most constructed stormwater wetlands).

“Stormwater management measure” means any structural or nonstructural strategy, practice, technology, process, program, or other method intended to control or reduce stormwater runoff and associated pollutants, or to induce or control the infiltration or groundwater recharge of stormwater.

“Stormwater runoff” means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

“Stream corridor” means any water course that flows into the Park, its tributaries, the 100-year floodplain associated with the water course and its tributaries, and all of the land within a 100-foot buffer adjacent to the 100-year flood line associated with the water courses and their tributaries. For any water course and its tributaries that discharge into the Canal, the stream corridor includes the water course and its tributaries, and either the 100-year floodplain associated with the water course and its tributaries and a 100 foot buffer adjacent to the 100-year flood line associated with the water course and its tributaries, or 300 feet along both sides of the water course or tributary, measured from the top of the water course’s banks, whichever is greater. A stream corridor starts from the point that the water course enters the Park, upstream to the point that the water course or its tributaries drain less than 50 acres.

“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, bulkheads, 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.



#### **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 that carries water must be protected.
    - ii. The quality of the water that enters the Canal—whether from a point source, overland flow of stormwater 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 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.

## **SUBCHAPTER 2 APPLICABILITY**

### **7:45-2.1 Jurisdictional determination, approval, authorization or waiver requirements**

An applicant proposing a governmental project or private project in the Review Zone, as defined in N.J.A.C. 7:45-1.2, shall first obtain from the Commission a jurisdictional determination as described at N.J.A.C. 7:45-2.2, an individual approval as described at N.J.A.C. 7:45-3 and 4, a general permit authorization as described at N.J.A.C. 7:45-5 and 6, and/or a waiver as described at N.J.A.C. 7:45-12.

### **7:45-2.2 Jurisdictional determination**

- (a) (a) An applicant may apply to the Commission for a written jurisdictional determination that states whether or not a project requires review and approval under this Chapter. If the proposed project requires review and approval, the jurisdictional determination shall identify the review zone in which the project is located, and whether it is a major or minor project. The jurisdictional determination shall also state whether the project requires an individual approval or may qualify for a general permit. To apply for a jurisdictional determination, the applicant shall submit the following:
1. A Commission application form (see N.J.A.C. 7:45-1.2)
  2. If the site currently contains impervious surface, the total amount of existing coverage in square feet or acres and the date it was constructed.
  3. A brief description of the proposed project and the amount of impervious surface proposed.
- (b) The following projects are exempt from Commission review and approval:
1. Any project located outside the Review Zone;
  2. Any project in Zone B that is not a major project, and
  3. Any project that is not a governmental project, and that does not require a municipal permit or approval.
- (c) A jurisdictional determination shall lapse:
1. If construction is not complete within five years from the date of the exemption letter; or
  2. If any municipal permit(s) or approval(s) applicable to the project expires, lapses, or is revoked.

### **7:45-2.3 Scope of review for approvals, authorizations and waivers**

- (a) In the Review Zone, the Commission shall review governmental and private projects that have the potential to cause an adverse impact on the Park including drainage, aesthetic, historic and ecological impacts. 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 and with the specific standards of this chapter. Review will address four specific types of impact:
1. Stormwater runoff and water quality impact;
  2. Stream corridor impact;
  3. Visual, historic and natural quality impact; and
  4. Traffic impact.
- (b) Submission requirements for the impact reviews identified at (a)1 through 4 above are set forth at N.J.A.C. 7:45-8 through 11.

- (c) In each case, the scope of review will depend upon the size and location of the project, as follows, and as illustrated in Table 1 below:
1. In Zone A:
    - i. Each major project is reviewed for visual, historic and natural quality impact, for stormwater runoff and water quality impact, for stream corridor impact, and for traffic impact;
    - ii. Each minor project is reviewed for visual, historic and natural quality impact, and for stream corridor impact; and
    - iii. Any minor project that will result in 800 square feet or more of impervious surface, cumulatively since January 11, 1980, is reviewed for stormwater runoff and water quality.
  2. In Zone B:
    - i. Each major project is reviewed for stormwater runoff and water quality impact, and for stream corridor impact; and
    - ii. Any major project within one mile of any portion of the Park and having direct access to a road that enters Zone A is reviewed for traffic impact.

**Table 1**  
**Scope of Review, by Project Type, within the Review Zone**  
**(X= requires review)**

	<b>Stormwater Runoff &amp; Water Quality Impact</b>	<b>Stream Corridor Impact</b>	<b>Traffic Impact</b>	<b>Visual, Historic &amp; Natural Impact</b>
<b>Zone A Minor Project</b>	X <sup>?</sup>	X		X
<b>Zone A Major Project</b>	X	X	X	X
<b>Zone B Major Project</b>	X	X	X <sup>?</sup>	

(This Table is for informational purposes only.  
 See N.J.A.C. 7:45-2.3 for the scope of review for particular project types.)

---

<sup>?</sup> If project will result in 800 square feet or more of impervious surface, cumulatively since January 11, 1980.

<sup>?</sup> If project is within one mile of the Park and has direct access to Zone A.

## **SUBCHAPTER 3 APPLICATION AND REVIEW PROCEDURES FOR INDIVIDUAL APPROVALS**

### **7:45-3.1 General provisions**

- (a) Each applicant for an individual approval shall submit to the Commission sufficient information for the Commission to adequately review and consider the project. Application forms are available from the Commission, as set forth in N.J.A.C. 7:45-1.2. The application form must be signed by the applicant for the particular project and the owner of the property on which the project is proposed.
- (b) An applicant may combine submission requirements for any project, provided all required information is shown with sufficient clarity to be understood.
- (c) Any application for an individual approval declared or deemed complete under N.J.A.C. 7:45-3.4 prior to June 1, 2009 shall be reviewed in accordance with the D&R Canal State Park Review Zone rules in effect on May 31, 2009; however, each applicant, or holder of an approval or authorization under a general permit shall be subject to a fee in accordance with N.J.A.C. 7:45-13 for each activity that the applicant or holder of an approval or authorization under a general permit requests after June 1, 2009.
- (d) Each application for an individual approval shall include an application form. The application form requires basic information regarding the applicant and the proposed project, such as the name and address of the applicant and any designated agents, the specific location of the project, other types of governmental permits that may be required of the applicant for the project, and a brief description of the proposed project. The application shall also include specific submissions as required at N.J.A.C. 7:45-8, 9, 10 and 11, as applicable. In general, the level of detail and documentation required for an application shall correspond to the size and impacts of the proposed project. The Commission shall, upon request, provide an applicant with guidance regarding the appropriate level of detail for a particular application.

### **7:45-3.2 Application for review of a private or governmental project other than one sponsored by a State agency**

An application for a private or governmental project other than one sponsored by a State agency shall not be acted upon by the Commission until it has been determined by the staff to be a complete application that, in addition to the pertinent submission requirements in this chapter, shall include a resolution of approval of the proposed project by the appropriate municipal and county approving agencies.

### **7:45-3.3 Pre-application conferences**

- (a) At any time before applying for an individual approval, an applicant may submit preliminary planning documents and 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 pre-application submission or conference shall be prepared by the Commission staff if requested by the applicant, and shall 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 municipal approving agency.
- (c) The Commission's recommendation shall, upon completion, be mailed to the applicant and the municipal approving agency.
- (e) 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.

**7:45-3.4 Review of decisions regarding private projects and governmental projects other than projects sponsored by a State agency**

- (a) Within 30 days after the date that an application for an individual approval for a project 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 additional information required for a complete application; or
  - 2. Declare the application complete and so notify in writing the applicant and the appropriate municipal and county approving agencies.
- (b) When the additional information required pursuant to (a)1 above is submitted, the Commission staff shall take one of the following actions within 30 days from the date the additional information is received in the Commission office:
  - 1. Notify the applicant in writing of any further information that is needed for a complete application; or
  - 2. Declare the application complete and so notify in writing the applicant and the appropriate municipal and county approving agencies.
- (c) The Commission staff shall prepare a report for the Commission that summarizes the relevant facts about an application and that gives the staff's recommendation to the Commission for its action on a project. The staff's recommendation may be supplemented with other written reports and/or with verbal testimony in the course of a public meeting of the Commission.
- (d) If no action is taken by the Commission staff within a period of 30 days from the date that an application (including a resolution of approval of the proposed project by the appropriate municipal and county approving agencies) is received in the Commission's office, the application shall be deemed to be complete.
- (e) Within 45 days from the date when an application is declared or deemed complete, the Commission shall take one of the following actions:
  - 1. Approve the application and notify in writing in accordance with N.J.A.C. 7:45-3.7 the applicant and the appropriate municipal and county approving agencies;

2. Reject the application and so notify in writing in accordance with N.J.A.C. 7:45-3.7 the applicant and the appropriate municipal approving and county agencies and the governing body of the municipality; or
  3. Approve the application subject to conditions and notify in writing in accordance with N.J.A.C. 7:45-3.7 the appropriate municipal and county approving agencies that shall be responsible for ensuring that the conditions are satisfied before issuing any municipal or county approval.
- (f) If the Commission fails to take action on an application by 45 days from the date that the application is declared or deemed to be complete, the application shall automatically be deemed to be approved. This default approval is subject to any applicable pre-approval conditions set forth in this chapter for activities covered by the application. The Commission shall not issue an individual approval until the conditions have been met.

#### **7:45-3.5 Review of and decisions regarding projects sponsored by a State agency**

- (a) For any governmental project sponsored by a State agency in the Review Zone but not in the 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.
- (b) Any State agency planning to undertake a governmental project in the Park shall submit a complete application together with all supporting information to the Commission.
- (c) Any State agency planning to undertake a governmental project in the Review Zone:
  1. Shall submit an application for review prior to 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, 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.
- (d) The Commission shall, within 45 days of receiving a copy of the complete application and all supporting information, either approve, reject, or approve with conditions the governmental project. The Commission shall notify the State agency of the Commission's decision within 10 days of that decision in accordance with N.J.A.C. 7:45-3.7.

#### **7:45-3.6 Review of permits issued by a State department or agency**

- (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 involves any portion of the Park or any activity therein.
- (b) Before the State department or agency issues the permit that is reviewable by the Commission under (a) above, the applicant shall submit a complete permit application together with all supporting information to the Commission, unless the State department or agency involved has already done so. The Commission shall, within 45 days of receiving a copy of the complete permit application and all supporting 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 in accordance with N.J.A.C. 7:45-3.7.

**7:45-3.7 Notice of decision**

- (a) The Commission shall notify in writing the Governor of each decision on an application for individual approval of a governmental project sponsored by a State agency within the Review Zone.
- (b) For all other applications, the Commission shall notify the following in writing of its decision for individual approvals: the applicant or his or her agent, the appropriate municipal and county approving agencies, and all persons who specifically requested notice.
- (c) The Commission shall explicitly state all conditions that must be met prior to issuance of the individual approval in the Notice of Decision.
- (d) The Commission's decision on an application 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.



## **SUBCHAPTER 4 INDIVIDUAL APPROVALS**

### **7:45-4.1 Issuance of an individual approval**

- (a) Construction, disturbance, or pre-construction earth movement is prohibited on any project prior to issuance of the Commission's individual approval, which shall be issued within 10 days of the Notice of Decision approving an application and receipt of the proof of filing of any required easement as provided in (h) below.
- (b) The individual approval may contain conditions imposed by the Commission to be carried out during or post construction. Failure to comply with any provision or any condition imposed in an individual approval shall render the approval null and void.
- (c) The holder of the approval shall not deviate from the approved plans and any deviation shall render the approval null and void if the Commission determines that the deviation measurably alters the character of the project or impairs the intent of either the Master Plan or this chapter.
- (d) The holder of the approval shall allow the Commission or its authorized agent access to the project site to inspect the project and otherwise determine compliance with the approval and this chapter.
- (e) Except as provided in (f) and (g) below, the approval shall remain valid for five years from the date of approval and shall not be extended.
- (f) An individual approval for a public roadway, railroad, or flood control project is valid for ten years from the date of approval, provided the applicant is a public entity and the applicant demonstrates that the size and scope of the project is likely to prevent the completion of the project within a five-year period.
- (g) An individual approval shall lapse if the municipal permits or approvals for the project expire, lapse, or are revoked within the five-year period.
- (h) When the Commission's Notice of Decision requires an easement affecting some or all of the property on which a project is located, an approval shall not be issued until the easement has been approved by the Commission and until proof is submitted to the Commission of the recording of such easement in the office of the appropriate County Clerk or Registrar of Deeds. Such proof shall consist of a copy of the first page of the easement with the County Clerk or Registrar of Deeds stamp, itemizing the number of pages that have been recorded. The applicant shall provide a complete copy of the recorded instrument within six months of the issuance of the instrument number.
- (i) The holder of the approval shall notify the Commission at least 10 days prior to start of construction.
- (j) The holder of the approval shall notify the Commission within 10 days of the completion of the construction or issuance of the permanent or temporary Certificate of Occupancy for the project.

- (k) Within three months of the issuance of the permanent Certificate of Occupancy for the project, the holder of the approval shall submit a certificate from a licensed engineer stating that the project was built in accordance with the plans upon which the approval was based.

**7:45-4.2 Modification of an individual approval**

- (a) If the holder of an individual approval proposes a change to the project for which an individual approval was issued, the holder shall submit a request for modification in writing and shall include sufficient information for the Commission to adequately review and consider the modification request. A holder of an individual approval may request:
  - 1. A minor modification under (b) below; or
  - 2. A major modification under (c) below.
  
- (b) The following changes are minor modifications that may be made to any individual approval:
  - 1. Correction of a typographical error that does not affect the terms of the approval; or
  - 2. For projects in Zone B, a change in materials, construction techniques, or the minor relocation of a structure on a site, if the change is required by another permitting agency. However, this change is not a minor modification if the change could affect any stream corridor.
  
- (c) Any change other than described at (b) above shall constitute a major modification. To obtain approval for a major modification, an applicant shall meet the same substantive and procedural standards that would apply to an application for a new individual approval, except that the application need only address the portions of the approval affected by the proposed modification. Portions of the approval that are not affected by the proposed modification are not subject to further Commission review, or other procedures that would apply to an application for a new individual approval.

## **SUBCHAPTER 5 GENERAL PROVISIONS FOR GENERAL PERMITS**

### **7:45-5.1 Promulgation of general permits**

- (a) A general permit is a permit established by rulemaking that applies to specific types of projects, as identified by the Commission. By promulgating a general permit pursuant to N.J.S.A. 13:13A-14e, the Commission indicates that it approves the type of project covered by the general permit, provided that the person undertaking the project obtains authorization from the Commission's Executive Director and meets the requirements of the general permit and the authorization.
- (b) The Commission will promulgate a general permit only if the Commission determines that the category of projects covered by the general permit will conform to the purposes of the Act, the Master Plan, and these rules.
- (c) Each general permit shall contain a specific description of the type of project to which it applies, including:
  - 1. Limits on any single project authorized under the General Permit. At a minimum, these limits shall include:
    - i. The maximum amount of impervious surface;
    - ii. The maximum extent to which an area may be disturbed;
    - iii. The maximum size of structure that may be constructed; and
    - iv. The type of structure that may be constructed; and
  - 2. A description of the geographic area to which the general permit applies.

### **7:7A-5.2 Using a general permit to authorize specific projects**

- (a) To apply for authorization under a general permit, an applicant shall submit the following:
  - 1. An application form. The application form requires basic information regarding the applicant and the proposed project, such as the name and address of the applicant and any designated agents, the specific location of the project, other types of governmental permits that may be required of the applicant for the project, and a brief description of the proposed project. The application form can be found on the Commission's website at [www.dandrcanal.com](http://www.dandrcanal.com).
  - 2. A site plan to scale, depicting the layout of any proposed structures and the square footage of all existing and proposed impervious surface.
  - 3. A survey of the property.
  - 4. Architectural elevations of all existing and proposed structures on the project site, if applicable.
- (b) Within 30 days after the date that an application for a general permit authorization for a project is received in the Commission's office, the Commission's Executive Director 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 additional information required for a complete application;
  - 2. Notify the applicant in writing that the project is not authorized under a general permit; or
  - 3. Issue the general permit authorization for the project with conditions, if any, in accordance with N.J.A.C. 7:45-5.3, and notify in writing:
    - i. The applicant or his or her agent;

- ii. the appropriate municipal and county approving agencies; and
  - iii. All persons who specifically requested notice.
- (c) Within 30 days from the date the additional information required under (b)1 above is received in the Commission office, the Commission's Executive Director shall take one of the following actions:
  - 1. Notify the applicant in writing of any further information that is needed for a complete application;
  - 2. Notify the applicant in writing that the project is not authorized under a general permit; or
  - 3. Issue the general permit authorization for the project with conditions, if any, in accordance with N.J.A.C. 7:45-5.3, and notify in writing:
    - i. The applicant or his or her agent;
    - ii. the appropriate municipal and county approving agencies; and
    - iii. All persons who specifically requested notice.
- (d) The Commission's Executive Director shall prepare a report that summarizes the relevant facts about the application and makes a determination of completeness, denial, or authorization, and shall provide the report to the applicant.
- (e) If no action is taken by the Commission's Executive Director on an application for authorization under a general permit within 30 days from the Commission's receipt of the application, then the application for authorization is deemed complete.
- (f) If no action is taken by the Commission's Executive Director on an application for authorization under a general permit within 10 days from the application's being deemed complete under (e) above, then the application is deemed approved. This default approval is subject to any applicable conditions set forth in this section for activities covered by the application.
- (g) Except for (h) below, a general permit authorization shall remain valid for five years from the date of the authorization and shall not be extended.
- (h) A general permit authorization shall lapse if the municipal permits or approval for the authorized project expire, lapse, or are revoked within the five-year period.
- (i) The Commission's Executive Director shall deny an application for a general permit authorization and require an application for an individual approval if the Executive Director finds that additional conditions added under N.J.A.C. 7:45-5.3(c) will not be sufficient to ensure compliance with the Act, the Master Plan and this chapter.
- (j) The limits on disturbance in each general permit apply to the entire site upon which the particular project authorized under the general permit occurs. An applicant shall not segment a project by applying for general permit authorization for one portion of the project and applying for an individual approval for another portion of the project. Similarly, an applicant shall not segment a project by separately applying for general permit authorizations for different portions of the same project.
- (k) Unless otherwise made a condition of the general permit in accordance with N.J.A.C. 7:45-5.3(c), the limits on disturbance under a general permit apply to total disturbance, including both temporary and permanent disturbances.

- (l) If a project is not authorized under a general permit or combination of general permits, an applicant must obtain an individual approval for the project.

### **7:45-5.3 Conditions that apply to all general permit authorizations**

- (a) A person undertaking a project under a general permit authorization shall comply with:
1. The standard conditions for all general permits set forth at (b) below;
  2. The conditions established for the specific general permit set forth at N.J.A.C. 7:45-6; and
  3. Any project-specific conditions imposed in accordance with (c) below.
- (b) The following standard conditions apply to all general permits:
1. The project shall not adversely affect properties that are listed or are eligible for listing on the New Jersey or National Register of Historic Places.
  2. The project will not violate the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., or the implementing rules at N.J.A.C. 7:7A; and
  3. The project will not violate the Flood Hazard Area Control Act, N.J.S.A. 58:16A- 50 et seq., or implementing rules at N.J.A.C. 7:13.
- (c) The Executive Director of the Commission may impose project-specific conditions in order for a particular project to be authorized under a general permit.

### **7:45-5.4 Use of multiple general permit authorizations**

- (a) The Commission's Executive Director may authorize multiple projects under one or more general permits on a single site provided that:
1. The conditions of each general permit are complied with;
  2. The total disturbance and/or size of the projects located on that site shall be calculated cumulatively to ensure that the limits of each general permit are met; and
  3. No authorization under General Permit 2, issued in accordance with N.J.A.C. 7:45-6.2, shall be approved if the cumulative impervious surface area of the project and projects authorized since January 11, 1980 is 800 square feet or more.

### **7:45-5.5 Modification of a general permit authorization**

- (a) If the holder of a general permit authorization proposes a change to the project for which a general permit authorization was issued, the holder shall submit a request for modification in writing and shall include sufficient information for the Commission's Executive Director to adequately review and consider the modification request. A holder of a general permit authorization may request:
1. A minor modification under (b) below; or
  2. A major modification under (c) below.
- (b) The following is a minor modification that may be made to any authorization issued under a general permit:
1. Correction of a typographical error that does not affect the terms of the authorization issued under the general permit.
- (c) Any modification other than described at (b) above shall constitute a major modification. To obtain approval for a major modification, a holder of an authorization shall meet the same substantive and procedural standards that would apply to an application for authorization under a general permit, except that the application need only to address the portions of the

authorization affected by the proposed modification. Portions of the authorization that are not affected by the proposed modification are not subject to further review, or other procedures that would apply to an application for a new general permit authorization.

## **SUBCHAPTER 6 GENERAL PERMITS**

### **7:45-6.1 General permit 1 – maintenance and repair of existing features**

- (a) General Permit 1 authorizes projects in Zone A that are necessary to carry out the repair, rehabilitation, maintenance or reconstruction of a structure, road, utility line, or stormwater management measure or basin lawfully existing prior to January 1980, or at any time approved by the Commission under this chapter.
- (b) The structure, road, utility line, or stormwater measure or basin authorized under this general permit shall not be put to any use other than as specified in any approval authorizing its original construction. Projects authorized under the general permit shall not expand, widen or deepen the feature, and shall not deviate from any plans of any prior project approvals, except for minor deviations due to changes in materials or construction techniques. Any such deviations must be shown as necessary to fulfill the purpose of the proposed project, and must be consistent with the Master Plan.

### **7:45- 6.2 General permit 2 – single family residential additions**

- (a) General Permit 2 authorizes the construction of additions or appurtenant improvements to a single family residential dwelling within the Zone A lawfully existing prior to October 10, 1974 or approved under this chapter by the Commission, provided that the addition or improvements meet the following requirements:
  - 1. The addition or improvement does not result in 800 square feet or more of impervious surface, cumulatively since January 11, 1980;
  - 2. The addition or improvement is entirely screened from the view of a person in the Park during the winter season by one or more of the following:
    - i. The topography of the land;
    - ii. Existing structures; or
    - iii. Existing vegetation located on permanently preserved land; and
  - 3. Development or disturbance shall not take place in a Commission regulated stream corridor as defined at N.J.A.C. 7:45-1.3.

## SUBCHAPTER 7 ADJUDICATORY HEARINGS

### 7:45-7.1 Request for an adjudicatory hearing

- (a) Subject to the limitations of (h) below, a person, including a municipality, county, or municipal or county approving agency, may request an adjudicatory hearing to contest a decision on an application for an individual approval, a waiver, or authorization under a general permit.
- (b) To contest a decision listed at (a) above, a person shall submit a hearing request within 30 calendar days after receipt of the notice of decision under N.J.A.C. 7:45-3.6 or 12.2(c). If a person submits the hearing request after this time, the Commission shall deny the request.
- (c) A request for an adjudicatory hearing shall be submitted to the Commission at the address at N.J.A.C. 7:45-1.2(b) and shall set forth:
  - 1. The name, address and daytime telephone number of the person requesting the hearing;
  - 2. The date the person requesting the hearing received notice of the decision contested;
  - 3. The project number, as provided by the Commission;
  - 4. When the request is submitted by someone other than the applicant or permittee or his or her agent, evidence that a copy of the hearing request has been mailed to the applicant;
  - 5. The names and addresses of each person whom the requester represents, if other than the applicant or permittee;
  - 6. A copy of the Commission notice or decision for which a hearing is being requested;
  - 7. An estimate of the number of days required for to hear the appeal;
  - 8. A specific admission, denial or explanation of each fact appearing in the Commission notice or decision or a statement that the person is without knowledge thereof;
  - 9. A statement of each legal or factual question alleged to be at issue, and the relevance of that question to the decision; and
  - 10. Information supporting the request or other written documents relied upon to support the request, unless those documents are already in the possession of the Commission;
- (d) In some cases, a hearing request may result in a stay of operation of a general permit or individual approval being appealed, as follows:
  - 1. If a permittee requests a hearing to appeal any portion of its permit, the hearing request shall automatically stay operation of the permit, unless the permittee shows good cause in writing why the permit should continue in effect while being contested. All permitted activities shall stop upon the date the hearing request is submitted, and shall not be started again until the matter is resolved, unless the Commission grants an exception in writing; and
  - 2. If a person other than the permittee requests a hearing on a permit, the requester may include with the hearing request a request for a stay of the permit. The Commission shall stay operation of the permit only upon its determination that good cause exists. If a stay is imposed, all permitted activities shall stop upon the date the stay is imposed, and shall not be started again until the matter is resolved, unless the Commission grants an exception in writing.
- (e) The Commission shall notify the requester in writing if the request for a hearing is granted and, if denied, the reasons why. If a hearing request is granted, the Commission shall refer



the matter to the Office of Administrative Law for an adjudicatory hearing in accordance with 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.

- (f) At the conclusion of any adjudicatory hearing in the Office of Administrative Law, the administrative law judge will submit an initial decision to the Commission. The Commission shall issue a final decision affirming, rejecting or modifying the initial decision, in accordance with 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.
- (g) The Commission's decision under (f) above shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review in the Appellate Division of the Superior Court, as provided in the Rules of Court.
- (h) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of the Administrative Procedure Act, N.J.S.A. 52:14B-3.1 through 3.3.

## **SUBCHAPTER 8    STORMWATER RUNOFF AND WATER QUALITY IMPACT REVIEW**

### **7:45-8.1    Purpose and scope of review**

- (a) Except for those projects expressly exempted by this chapter or waived by the Commission, the Commission shall review the following for stormwater runoff and water quality impact:
  - 1. Major projects within Zone A;
  - 2. Minor projects within Zone A that will result in 800 square feet or more of impervious surface, cumulatively since January 11, 1980; and
  - 3. Major projects within Zone B.
  
- (b) The scope of review for stormwater runoff and water quality impact includes the following:
  - 1. New impervious surface;
  - 2. Redevelopment of existing impervious surface; and
  - 3. Collection of stormwater runoff from ¼ acre or more of existing impervious surface where stormwater is not currently collected.

### **7:45-8.2    Submission requirements**

- (a) The following shall be submitted to the Commission for review of stormwater runoff and water quality impacts:
  - 1. United States Geological Survey (U.S.G.S.) Location Map;
  - 2. Full set of site grading and utility plans including lot and block lines;
  - 3. Pre-Development and Post-Development Drainage Area Maps (1"=100' or 1"=200'), showing two feet contour intervals;
  - 4. Photos of drainage and site conditions;
  - 5. Description of existing site conditions including outlines of woodland cover and utilities;
  - 6. Soils maps of site, including soil types and classification;
  - 7. Flow chart for hydrologic model;
  - 8. Stage/volume/outflow chart, calculations for chart, and constants used in the calculations (weir and pressure flow coefficients);
  - 9. Groundwater elevation and depth to groundwater;
  - 10. Details of outlet structure(s);
  - 11. Summary tables showing comparison of pre- and post-developed conditions for the one, two, 10 and 100-year storm events;
  - 12. Detailed calculations for pre-developed and post-developed conditions;
  - 13. Calculations to demonstrate compliance with the water quality provision;
  - 14. Soils information, including percolation rates;
  - 15. Recharge spreadsheet;
  - 16. Non-structural points system spreadsheets; and
  - 17. Stormwater management calculations on a digital disk in addition to the paper version.

### **7:45-8.3    Specific standards for outfalls**

- (a) For projects involving new or existing outfalls in the Review Zone, the following standards shall be required:
  - 1. New outfalls to the Canal are prohibited;

2. New sources of stormwater that tie into drainage systems discharging into the Canal are prohibited;
3. New outfalls within stream corridors of water courses that discharge to the Canal are prohibited;
4. New outfall structures within the Park or within 300 feet of the Canal are prohibited;
5. For projects discharging to existing outfalls in the Canal, the Commission shall consider the following prioritization of types of remediation measures:
  - i. Removal of the existing outfalls; or
  - ii. Where the removal of existing outfalls is not possible under (a)5i above, stormwater being discharged through the outfall shall be treated to achieve 95 percent TSS removal for the water quality design storm, as described at N.J.A.C. 7:45-8.8; or
  - iii. Where treatment for all stormwater is not possible under (a)5ii above, stormwater from offsite areas shall be treated to achieve 95 percent total suspended solids (TSS) removal as follows:
    - (1) Water quality treatment shall be provided for a developed area within the Canal's drainage basin that does not receive water quality treatment. The water quality treatment must achieve one of the following:
      - a. An equivalent reduction in TSS loadings for twice the volume of stormwater generated by the proposed project during the water quality design storm; or
      - b. An equivalent reduction in TSS loadings for twice the flow rate generated by the proposed project during the water quality design storm.
    - (2) An applicant shall provide clear and convincing documentation to demonstrate that a proposed project requires use of an existing outfall into the Canal, and that the remediation measures in (a)5 above cannot be met. If the applicant so demonstrates, alternative compensatory measures including offsite mitigation for water quality must then be provided, in accordance with N.J.A.C. 7:45-12.6, Waiver of stormwater runoff and water quality.

#### **7:45-8.4 Specific nonstructural stormwater management strategies**

- (a) To the maximum extent practicable, the standards in this subchapter shall be met by incorporating nonstructural stormwater management strategies into the design. The persons submitting an application for review shall identify the nonstructural strategies incorporated into the design of the project. If the applicant contends that it is not feasible for engineering, environmental, or safety reasons to incorporate any nonstructural stormwater management strategies identified in (b) below into the design of a particular project, the applicant shall identify the strategy and provide a basis for the contention.
- (b) Nonstructural stormwater management strategies incorporated into site design shall:
  1. Protect areas that provide water quality benefits or areas particularly susceptible to erosion and sediment loss;
  2. Minimize impervious surface and break up or disconnect the flow of runoff over impervious surface;
  3. Maximize the protection of natural drainage features and vegetation;
  4. Minimize the decrease in the "time of concentration" from pre-construction to post-construction. "Time of Concentration" is defined as the time it takes for runoff to

- travel from the hydraulically most distant point of the drainage area to the point of interest within a watershed;
  - 5. Minimize land disturbance including clearing and grading;
  - 6. Minimize soil compaction;
  - 7. Provide low-maintenance landscaping that encourages retention and planting of native vegetation and minimizes the use of lawns, fertilizers and pesticides;
  - 8. Provide vegetated open-channel conveyance systems discharging into and through stable vegetated areas; and
  - 9. Provide other source controls to prevent or minimize the use or exposure of pollutants at the site in order to prevent or minimize the release of those pollutants into stormwater runoff. These source controls include, but are not limited to:
    - i. Site design features that help to prevent accumulation of trash and debris in drainage systems;
    - ii. Site design features that help to prevent discharge of trash and debris from drainage systems;
    - iii. Site design features that help to prevent and/or contain spills or other harmful accumulations of pollutants at industrial or commercial developments; and
    - iv. When establishing vegetation after land disturbance, applying fertilizer in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules.
- (c) Guidance for nonstructural stormwater management strategies is available in the New Jersey Stormwater Best Management Practices Manual available from the Department through [www.dandrcanal.com](http://www.dandrcanal.com). The applicant may submit the Department's Nonstructural Stormwater Strategies Point System worksheet (available at [www.dandrcanal.com](http://www.dandrcanal.com)) to show compliance with this section of the regulations.

#### **7:45-8.5 Specific recharge standards**

- (a) The minimum design and performance standards for groundwater recharge are as follows:
1. The design engineer shall, using the guidance provided in the New Jersey Stormwater Best Management Practices Manual for stormwater runoff and groundwater recharge calculations, either:
    - i. Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100 percent of the average annual preconstruction groundwater recharge volume for the site; or
    - ii. Demonstrate through hydrologic and hydraulic analyses that any increase of stormwater runoff volume from pre-construction to post-construction for the two-year storm is infiltrated.
  2. The groundwater recharge requirement does not apply to redevelopment projects that are subject to the following types of existing stormwater:
    - i. Stormwater from areas of high pollutant loading. High pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied, areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than "reportable quantities" as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with Department approved remedial action work plans or landfill closure plans and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and

- ii. Industrial stormwater exposed to “source material.” “Source material” means any material(s) or machinery, located at an industrial facility that is directly or indirectly related to process, manufacturing or other industrial activities, that could be a source of pollutants in any industrial stormwater discharge to groundwater. Source materials include, but are not limited to, raw materials; intermediate products; final products; waste materials; by-products; industrial machinery and fuels, and lubricants, solvents, and detergents that are related to process, manufacturing, or other industrial activities that are exposed to stormwater.
3. The design engineer shall assess the hydraulic impact on the groundwater table and design the site so as to avoid all material, measurable adverse hydraulic impacts to the maximum extent possible. Potential adverse hydraulic impacts include, but are not limited to, exacerbating a naturally or seasonally high water table so as to cause surface ponding, flooding of basements, or interference with the proper operation of subsurface sewage disposal systems and other subsurface structures in the vicinity or downgradient of the groundwater recharge area.

#### **7:45-8.6 Specific stormwater runoff quantity standards**

- (a) In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff, complete one of the following:
  1. Design stormwater management measures so that the post-construction peak runoff rates for the two, 10 and 100-year storm events are 50, 75 and 80 percent, respectively, of the pre-construction peak runoff rates.
  2. Demonstrate through hydrologic and hydraulic analyses that for stormwater leaving the site, post-construction runoff hydrographs for the two, 10, and 100-year storm events do not exceed, at any point in time, the pre-construction runoff hydrographs for the same storm events;
  3. Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the pre-construction condition, in the peak runoff rates of stormwater leaving the site for the two, 10, and 100-year storm events and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts of existing land uses and projected land uses assuming full development under existing zoning and land use ordinances in the drainage area;
- (b) The percentages apply only to the post-construction stormwater runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed.

#### **7:45-8.7 Specific water quality standards**

- (a) Stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) in stormwater runoff generated from the water quality design storm by 80 percent of the anticipated load from the developed site, expressed as an annual average. The water quality design storm is 1.25 inches of rainfall in two hours. Water quality calculations shall take into account the distribution of rain from the water quality design storm, as reflected in Table 1 below. The calculation of the volume of runoff may take into account the implementation of non-structural and structural stormwater management measures.

**Table 1  
Water Quality Design Storm Distribution**

<b>Time (Minutes)</b>	<b>Cumulative Rainfall (Inches)</b>	<b>Time (Minutes)</b>	<b>Cumulative Rainfall (Inches)</b>
0	0.0000	65	0.8917
5	0.0083	70	0.9917
10	0.0166	75	1.0500
15	0.0250	80	1.0840
20	0.0500	85	1.1170
25	0.0750	90	1.1500
30	0.1000	95	1.1750
35	0.1330	100	1.2000
40	0.1660	105	1.2250
45	0.2000	110	1.2334
50	0.2583	115	1.2417
55	0.3583	120	1.2500
60	0.6250		

The requirement to reduce TSS does not apply to any stormwater runoff in a discharge regulated under a numeric effluent limitation for TSS imposed under the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, or in a discharge specifically exempt under a NJPDES permit from this requirement.

- (b) For purposes of TSS reduction calculations, Table 2 below is the presumed removal rates for certain BMPs designed in accordance with the New Jersey Stormwater Best Management Practices Manual. The BMP manual may be obtained from the Commission’s website at [www.dandrcanal.com](http://www.dandrcanal.com). TSS reduction shall be calculated based on the removal rates for the BMPs in Table 2 below. Alternative removal rates and methods of calculating removal rates may be used if the design engineer provides documentation demonstrating the capability of these alternative rates and methods to the Commission.
- (c) If more than one BMP in series is necessary to achieve the required 80 percent TSS reduction for a site, the applicant shall utilize the following formula to calculate TSS reduction:  
 $R = A + B - (A \times B) / 100$  Where  
R = total TSS percent load removal from application of both BMPs,  
A = the TSS percent removal rate applicable to the first BMP  
B = the TSS percent removal rate applicable to the second BMP

**Table 2  
TSS Removal Rates for BMPs**

Bio Retention Systems	90
Constructed Stormwater Wetland	90
Extended Detention Basin	40-60
Infiltration Structure	80
Manufactured Treatment Devices (See certification by NJCATS on <a href="http://njstormwawer.org">njstormwawer.org</a> )	50-80
Sand Filter	80
Vegetative Filter Strip	60-80
Wet Pond	50-90

- (d) If there is more than one onsite drainage area, the 80 percent TSS removal rate shall apply to each drainage area, unless the runoff from the subareas converge on site in which case the removal rate can be demonstrated through a calculation using a weighted average.
- (e) Additional information and examples are contained in the New Jersey Stormwater Best Management Practices Manual.

**7.45-8.8 Specific stormwater management maintenance requirements**

- (a) Responsibility for operation and maintenance of stormwater 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 runs with the land to all heirs, successors, persons and assigns and to any and all mortgagees. Permanent conservation and maintenance easements to ensure continued performance of these obligations shall be completed and executed by the owner of the property on forms provided by the Commission. Stormwater facilities maintained by local, county or State government agencies shall not be required to file a conservation and maintenance easement. The easements shall include, but not be limited to, the following information provided by the applicant:
  1. A list of all structural stormwater management facilities; and
  2. A maintenance plan for the stormwater management measures incorporated into the design of a major development. The maintenance plan shall contain specific preventive maintenance tasks and schedules, and the name, address, and telephone number of the person or persons responsible for preventive and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.

- (b) Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project.
- (c) The person responsible for maintenance identified under (a) above shall maintain a detailed log of all preventive and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders.
- (d) The person responsible for maintenance identified under (a) above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan as needed.
- (e) The Commission may require the recordation in the County Clerk's office of a Conservation Restriction for any land area used as a nonstructural stormwater management measure to meet the performance standards in N.J.A.C. 7:45-8.4. The Conservation Restriction shall be subject to the Commission's prior approval, or equivalent restriction that ensures that measure or an equivalent stormwater management measure is maintained in perpetuity.
- (f) Nothing in this section shall preclude the municipality in which the project is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.



## **SUBCHAPTER 9    STREAM CORRIDOR IMPACT**

### **7:45-9.1        Scope of review**

- (a) Each project within Zone A or Zone B, or both, of the Review Zone shall be subject to review by the Commission for stream corridor impact if the project includes a portion of a stream corridor, as defined at N.J.A.C. 7:45-1.3.

### **7:45-9.2        Submission requirements**

- (a) For each project that is subject to review by the Commission for stream corridor impact in accordance with N.J.A.C. 7:45-9.1, the applicant shall submit to the Commission a map of the project site delineating the stream corridor at a scale of one inch equals 100 feet and containing the following:
  1. The 100-year flood line, verified by the Department's Division of Land Use Regulation;
  2. The 100 foot wide buffer along the 100-year flood line;
  3. The location of all improvements and/or disturbances proposed to be located within the stream corridor;
  4. A description of existing vegetation in the stream corridor; and
  5. A metes and bounds description of the project site boundary and the stream corridor boundary, both on hard copy as well as a digital rendition, either as a CAD .dxf file or ArcView shapefile.

### **7:45-9.3        Prohibited uses within stream corridors**

- (a) The following uses shall be prohibited within a stream corridor:
  1. Construction of new structures, including but not limited to buildings, retaining walls, and detention or retention basins;
  2. Regrading of the existing topography;
  3. On-site sewage disposal systems;
  4. 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;
  5. Junk yards, commercial and industrial storage facilities and the open storage of vehicles and materials;
  6. Barns, stables, feedlots, barnyards, poultry buildings, and farm waste disposal facilities;
  7. Parking facilities, driveways and roads that parallel the stream corridor;
  8. Removal of native vegetation or actions that result in the death of native vegetation except as necessary in connection with activities in the stream corridor permitted by the Commission;
  9. Installation of non-native vegetation; and
  10. New outfalls within stream corridors of water courses that discharge to the Canal, as described at N.J.A.C. 7:45-8.3.
  
- (b) Applicants for residential projects shall design them to ensure a minimum of 25 feet of usable yard between the stream corridor and dwellings, as existing topography of a stream corridor cannot be regraded nor can native vegetation be removed.

#### **7:45-9.4 Conditional uses within stream corridors**

- (a) The following uses may be permitted within a stream corridor of a water course as defined in N.J.A.C. 7:45-1.3 that does not directly enter the Canal, if the applicant demonstrates to the satisfaction of the Commission that the proposed use complies with the Master Plan and this chapter:
1. Recreational paths;
  2. Outlet installation for sewage treatment plants and sewage pumping stations, and the expansion of existing sewage treatment facilities;
  3. Private or public water supply wells that have a sanitary seal;
  4. Culverts, pipelines, 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. Crossings shall be designed to ensure that fish passage is unimpeded when the water level of the stream is at its lowest, unless the applicant demonstrates that the stream is unsuitable for habitation by fish and will remain so for the foreseeable future. The applicant shall ensure fish passage by maintaining the existing gradient and bottom contours of the water body to the extent possible, and by using arched culverts, or other structures that will ensure unimpeded fish passage;
  5. Sanitary or storm sewers;
  6. Outfall structures associated with storm water management facilities;
  7. Underground 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 that will not impede flows or cause ponding of water;
  8. If the project site is a lot totaling less than one acre, and if the lot has been in existence since January 1989, the construction of one house or portion thereof may be conditionally permitted within the stream corridor. This conditional use does not apply, however, to the 100-year floodplain portion of the stream corridor.
- (b) The following uses may be permitted within a stream corridor of a water course that enters directly into the Canal as defined at N.J.A.C. 7:45-1.3, if the applicant demonstrates to the satisfaction of the Commission that the proposed use complies with the Master Plan and this chapter:
1. Recreational paths;
  2. Private or public water supply wells that have a sanitary seal;
  3. Culverts, pipelines, bridges and roads that cross the corridor as directly as practical, and that have received approval from all appropriate municipal, county and State agencies having such authority. Crossings shall be designed to ensure that fish passage is unimpeded when the water level of the stream is at its lowest, unless the applicant demonstrates that the stream is unsuitable for habitation by fish and will remain so for the foreseeable future. The applicant shall ensure fish passage by maintaining the existing gradient and bottom contours of the water body to the extent possible, and by using arched culverts, or other structures that will ensure unimpeded fish passage;
  4. Underground 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 that will not impede flows or cause ponding of water; and
  5. Flow or water quality measuring devices.

**7:45-9.5      Preservation of stream corridor**

The applicant shall take whatever measures are necessary to ensure that stream corridors will be preserved and to prevent future encroachments in the stream corridor. At a minimum, such measures shall include easements, deed restrictions, or other measures satisfactory to the Commission.

**7:45-9.6      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 individual approval, the provisions of this subchapter being considered as minima and not maxima. In such instances, the applicant shall grant to the Commission an easement or conservation restriction.

## **SUBCHAPTER 10 VISUAL, HISTORIC AND NATURAL QUALITY IMPACT**

### **7:45-10.1 Submission requirements**

- (a) The following shall be submitted to the Commission for review of the visual, historic 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” or greater, rock masses, and all other natural and man-made features, with designation of the features that 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.
  5. Survey of the property.
  6. For private projects within the Park, a copy of a lease agreement application to the New Jersey Water Supply Authority.

### **7:45-10.2 General standards of review for visual, historic 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, historic 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 based upon the character of the section of the Park and its adjoining corridor. The six environmental types are:
1. Natural: Sign of human impact are non-existent or slight;
  2. Rural: Natural conditions dominate but unobtrusive signs of human impact exist;
  3. Suburban: A dominant feeling of open space, but that space is chiefly defined by structures;
  4. Urban: Enclosure by dense development;
  5. Transportation: Park squeezed between roads, railroads, and river or stream; and
  6. Special Node: Small areas with unique characteristics.

### **7:45-10.3 Review of visual, historic and natural quality impact of 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 shall not grant approval unless specific 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 setback 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 be as near the Park as possible;
  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) For minor projects proposed to be located in those portions of Zone A that comprise the Natural, Rural, Transportation, and Special Node Environments of the Park, the Commission may require specific compensatory measures in order to mitigate the project's potential for harmful impact may be required as a condition of approval.

**7:45-10.4 Design standards for review of visual, historic and natural quality impact**

- (a) Except as provided in N.J.A.C. 7:45-10.3 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 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 be limited to a height of 40 feet above existing grade where existing vegetation does not provide adequate winter screening.
- (c) For major and minor 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 and minor 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, historic 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. Waivers may be requested from the Commission for aboveground 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 to minimize their visual impact on the Park.

3. No commercial signs or outdoor advertising structures in excess of eighty square feet surface area shall be visible from the Park.
4. All commercial signs and outdoor advertising structures in excess of six square feet surface area shall comply with the following standards:
  - i. In urban, suburban and transportation environments, no freestanding 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. For urban environments, no freestanding sign or other advertising devices or parts thereof visible from the Park shall be more than 100 feet above ground level; and
  - v. For suburban and transportation environments, no freestanding signs or other advertising devices or parts thereof visible from the Park shall be more than 40 feet above ground level.
5. 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.
6. Projects that are located in any officially designated Federal, State or local historic district or site shall be assessed for their impact upon that district or site. Recommendations to avoid, minimize, and/or mitigate the impacts of a project on a listed property shall be made in consultation with the New Jersey Historic Preservation Office and based upon the United States Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, available at <http://www.nps.gov/history/hps/tps/standguide/>, as supplemented or amended, and incorporated herein by reference, in accordance with N.J.A.C. 7:4-8 of the New Jersey Register of Historic Places Rules. Commission staff will consult with the New Jersey Historic Preservation Office, as needed.

## **SUBCHAPTER 11 TRAFFIC IMPACT**

### **7:45-11.1 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 that 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 that 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.

### **7:45-11.2 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.

## **SUBCHAPTER 12 WAIVER OF STRICT ADHERENCE TO REVIEW STANDARDS**

### **7:45-12.1 Purpose**

This subchapter establishes procedures and standards pursuant to which the Commission may waive strict adherence to one or more of the review standards in this chapter. Waivers granted pursuant to this subchapter are intended to provide relief where strict adherence to the Commission's review standards 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 the Commission determines that the waiver granted will not create an adverse impact on the Park and will not impair the intent and purpose of the Master Plan or this chapter.

### **7:45-12.2 Procedure**

- (a) A waiver request shall be in writing and shall demonstrate that the project will comply with this Chapter, subject to the waiver. The request shall also include the documentation required for approval of a project under N.J.A.C. 7:45-3, and must include all documentation that N.J.A.C. 7:45-3 requires for the standard for which a waiver is sought.
- (b) To support a waiver based upon extreme economic hardship, the applicant shall submit to the Commission documentation including, but not limited to, the following:
  - 1. Proof that any current use of the property is not capable of yielding a reasonable return if its present use is continued;
  - 2. Identification of the specific regulatory provisions for which the applicant seeks a waiver;
  - 3. An explanation of how the project has been designed to comply as much as possible with the other parts of this chapter as well as any proposed mitigation techniques proposed to offset waiving strict adherence to the requirements of this chapter;
  - 4. Documentation that the subject property has been offered for sale for market value, as defined in the Green Acres Program rules at N.J.A.C. 7:36-2.1, to other interested parties including the contact persons and phone numbers (including adjacent land owners, the Department's Green Acres program, or other conservation groups) and that they are not interested in purchasing the property for market value.
  - 5. A complete purchase contract for the subject property;
  - 6. A title report and the title policy;
  - 7. The survey used for the purchase;
  - 8. A copy of any mortgage on the property since acquisition by the present owner; and
  - 9. A copy of current municipal zoning ordinance and permissible uses for the site.
- (c) Within 30 days after the date that an application for waiver 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.
- (d) The Commission shall determine whether to deny, approve or approve with conditions an application for a waiver from project review within 45 days from the date when an application has been declared complete. The Commission may require specific



compensatory measures to mitigate the project's potential harmful impact on the Park as conditions of a waiver approval.

- (e) 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. 7:45-3.9.
- (f) The notice of decision on the waiver application shall advise the applicant, municipal reviewing agency and those interested 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. 7:45-7.
- (g) A waiver of one or more requirements shall lapse:
  - 1. If construction is not complete within five years from the date of the approval; or
  - 2. If the municipal permits or approvals expire, lapse, or are revoked.

**7:45-12.3 Waiver of review standards due to extreme economic hardship or compelling public need**

- (a) The Commission may waive a requirement of this chapter, upon a clear and convincing demonstration by the applicant that:
  - 1. Strict adherence to the review standards or to a specific requirement of this chapter would not be practical and would result in extreme economic hardship, or would conflict with a compelling public need; and
  - 2. 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 that 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 provisions of this chapter and that this inability to yield a reasonable return results from unique circumstances peculiar to the subject property that:
    - 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; and
  - 3. The applicant has provided documentation showing that the subject property has been offered for sale for market value, as defined in the Green Acres Program rules at N.J.A.C. 7:36-2.1 to other interested parties (including adjacent land owners, the Department's Green Acres program, or other conservation groups), and that none of

the parties has expressed an interest in acquiring the subject property for market value.

- (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; and
  - 4. There is no alternative available to meet the established public health or safety need.
  
- (d) Any waiver granted due to economic hardship or compelling public need must meet the following criteria:
  - 1. The waiver is the minimum relief necessary to relieve the hardship or need.
  - 2. The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the Master Plan or this chapter; and
  - 3. 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 will not result in substantial impairment of the resources of the Park.

#### **7:45-12.4 Waiver of stream corridor impact standards**

- (a) Projects otherwise subject to review by the Commission for stream corridor impact may be waived from strict adherence to such standards 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 ability to function as a buffer for the water course'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 a greater ecologically beneficial effect than would compliance with this chapter. Neither of these techniques will be accepted by the Commission, however, for proposals that include either:
    - i. Intrusions into the 100-year flood plain portion of the stream corridor; or
    - ii. For water courses that drain directly into the Canal, intrusions within 150 feet of their tops of banks.

#### **7:45-12.5 Waiver of traffic impact standards**

Projects otherwise subject to review by the Commission for traffic impact will be waived from strict adherence to 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.

#### **7:45-12.6 Waiver of stormwater runoff and water quality impact standards**

- (a) Projects otherwise subject to review by the Commission for stormwater runoff and water quality impact may be waived from strict adherence to such standards if the applicant establishes to the satisfaction of the Commission that:
  - 1. The project will not adversely affect, either directly or indirectly, the quality of surface waters of the Park under either wet or dry weather conditions; and
  - 2. The groundwater effects produced by the project are unlikely to measurably harm the quality of the surface waters or groundwaters of the Park.

- (b) An application for a waiver to install a new outfall or discharge stormwater into waters or conduits that flow into the Canal shall include documentation to show that the prohibition of such discharge will result in an extreme economic hardship or that the project will serve a compelling public need as described at N.J.A.C. 7:45-12.3.
- (c) The proposed new discharge as described at (b) above is to be treated to meet the water quality standard of 95 percent TSS removal.
- (d) If the Commission finds, based on the applicant's submissions, that the proposed new discharge as described at (b) above cannot be treated to meet the water quality at (c) above because the requirement will result in an extreme economic hardship or that the project will serve a compelling public need, such that a lower treatment standard is appropriate, the applicant shall:
  - 1. Present to the Commission a proposal to treat untreated stormwater in the Canal's drainage basin to achieve an equivalent reduction in TSS loadings for a volume of stormwater equal to double the volume of stormwater generated by the proposed project (cubic feet based on the water quality storm) or treatment for double the rate of flow (cubic feet per second based on the water quality storm), whichever provides greater mitigation; or
  - 2. Include in its project a cash donation to a mitigation bank administered by the New Jersey Water Supply Authority to be used for water quality improvement projects for the Canal with the equivalent mitigation benefits.

**7:45-12.7 Waiver of visual, historic and natural quality impact standards**

- (a) Projects otherwise subject to the visual, historic and natural quality standards may be waived from strict adherence to such standards, 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
    - i. The topography of the land screens the entire project from the view of a person in the Park;
    - ii. Existing structures screen the entire project from the view of a person in the Park; or
    - iii. Vegetation located on preserved land screens the entire project from the view of a person in the Park during the winter season.
- (b) Projects may be waived from the setback requirement if a divided highway exists between the Park and the project site if the Commission determines that the road and its traffic create a sufficient barrier to the visual impact of the project.
- (c) Projects may be waived from the setback requirement if they are additions to a pre-existing nonconforming structure and the Commission determines that the proposed addition will not further impose on the character of the Park.
- (d) The Commission may require additional restrictions, conditions, or special compensatory measures that mitigate waiver of strict adherence to the review procedure as outlined in N.J.A.C. 7:45-10.3.

**7:45-12.8 Waiver of reconstruction or minor alteration review**

Government and private projects otherwise subject to review by the Commission for reconstruction or minor alterations may be waived from strict compliance with the Commission's standards if the applicant establishes to the satisfaction of the Commission that the project consists solely of the reconstruction of a previously existing structure that 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. For projects within Zone A, reconstruction must not alter the appearance of the structure prior to the natural disaster. Structures that are totally destroyed by such natural disasters are not eligible for waiver.

**7:45-12.9 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.

## SUBCHAPTER 13 FEES

### 7:45-13.1 General fee provisions

- (a) Each application submitted to the Department shall include all applicable fees unless otherwise specified in this section. An application that does not include the fee or fees required under this subchapter shall be considered incomplete, and shall be handled accordingly pursuant to N.J.A.C. 7:45-3.4. The fees for each application are set forth at N.J.A.C. 7:45-13.2
- (b) In accordance with the applicable application checklist, an applicant may submit a personal check, certified check, attorney check, government purchase order, or money order to pay for all fees. **Fees shall be made payable to the “Treasurer, State of New Jersey.”**
- (c) A Commission application review may be comprised of several components. Not all applications require review under all components. The applicant shall be required to pay the fee(s) for only those review components that are required under a particular application.

### 7:45-13.2 Fee schedule

- (a) The fee for a written jurisdictional determination shall be \$50.00.
- (b) The fee for authorization under General Permit 1 shall be \$50.00.
- (c) The fee for authorization under General Permit 2 shall be \$100.00.
- (d) The fee for visual impact review of a minor project in the A Zone in accordance with N.J.A.C. 7:45-10 shall be \$250.00.
- (e) The fee for visual impact review of a major project in the A Zone in accordance with N.J.A.C. 7:45-10 shall be \$500.00 (base) plus \$100.00 per lot.
- (f) The fee for stormwater review in accordance with N.J.A.C. 7:45-8 shall be
  1. For minor A Zone projects:
    - i. Single family home or duplex: \$100.00
    - ii. Projects adding less than 800 square feet of impervious surface: \$100.00
    - iii. All other minor A Zone projects: \$500.00.
  2. For all major projects requiring review of stormwater calculations: \$2,000 (base).
  3. For all projects requiring review of groundwater recharge calculations, per land area disturbed by the project:
    - i. Less than three acres: \$500.00.
    - ii. Between three and 10 acres: \$1,000.
    - iii. Between 10 and 100 acres: \$2,000.
    - iv. Over 100 acres: \$4,000.
  4. For all projects requiring review of runoff quantity calculations, per land area disturbed by the project:
    - i. Less than 3 acres: \$500.00.
    - ii. Between 3 and 10 acres: \$1,000.
    - iii. Between 10 and 100 acres: \$2,000.
    - iv. Over 100 acres: \$4,000.
  5. For all projects requiring review of water quality calculations, per land area disturbed

by the project:

- i. Less than three acres: \$500.00.
- ii. Between three and 10 acres: \$1,000.
- iii. Between 10 and 100 acres: \$2,000.
- iv. Over 100 acres: \$4,000.

- (g) The fee for stream corridor impact review in accordance with N.J.A.C. 7:45-9 shall be:
  1. For a minor project in the A Zone:
    - i. Single family home or duplex, or projects adding less than 800 square feet of impervious surface: \$250.00
    - ii. All other minor A Zone projects: \$2,000, plus \$1,000 if a waiver from strict compliance of the regulation is requested, in accordance with N.J.A.C. 7:45-9.
  2. For all major projects requiring review of stream corridor impact in accordance with N.J.A.C. 7:45-9, the fee shall be \$2,000, plus \$1,000 if a waiver from strict compliance of the regulation is requested, in accordance with N.J.A.C. 7:45-9.
- (h) For all projects requiring review of traffic impact in accordance with N.J.A.C. 7:45-11, the fee shall be \$500.00.
- (i) For all projects requiring review of subdivision review (lot line review only) in accordance with N.J.A.C. 7:45, the fee shall be \$100.00.
- (j) There is no fee for a minor modification in accordance with N.J.A.C. 7:45-4.2.
- (k) For all projects proposing major modifications in accordance with N.J.A.C. 7:45-4.2, the fee shall be 25 percent of all fees originally charged for the approval that is being modified.
- (l) The fee for review of a request for an extension to an approval is \$50.00. The approval for which an extension may be granted must have been secured prior to June 1, 2009.
- (m) There are no fees required for any projects for which the applicant is either the Division of Parks and Forestry or the New Jersey Water Supply Authority.

## **SUBCHAPTER 14 SEVERABILITY**

### **7:45-14.1 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.

