



NEW JERSEY REGISTER OF HISTORIC PLACES ACT

NJ LAWS OF 1970, CHAPTER 268

AND PROCEDURES FOR PROJECT AUTHORIZATION

INTRODUCTION

Since 1970 the State of New Jersey has recognized and protected historic properties with a straightforward and effective law, the New Jersey Register of Historic Places Act. The law allows historic properties to be nominated and entered in the New Jersey Register of Historic Places, which is maintained by the Department of Environmental Protection, Division of Parks & Forestry, Historic Preservation Office. Once a property is listed in the New Jersey Register of Historic Places, any public undertaking that would “encroach upon, damage or destroy” the registered historic property must receive prior authorization from the Commissioner of the Department of Environmental Protection. Strictly private undertakings are not reviewable under the law. The Historic Sites Council, an advisory board to the Commissioner, reviews all such proposed encroachments at an open public meeting and makes recommendations to the Commissioner for final action. This publication presents the law and its accompanying administrative procedures for project authorization in an easy-to-read format.

On September 15, 1997, the Department readopted, with amendments, administrative procedures for the New Jersey Register of Historic Places Act. The “Procedures Concerning the New Jersey Register of Historic Places” (N.J.A.C. 7:4) establish the criteria and procedures for:

- ◆ the listing of historic properties in the New Jersey Register of Historic Places (New Jersey Register);
- ◆ the removal of historic properties from the New Jersey Register;
- ◆ redelineation and/or relocation of historic properties already on the New Jersey Register;
- ◆ certifications of eligibility for listing in the New Jersey Register in order to qualify for a historic preservation bond act grant or loan; and
- ◆ review of State, county, and municipal projects affecting sites listed in the New Jersey Register (including emergency reviews).

The rules enable the Historic Preservation Office to more expeditiously authorize project undertakings if they are judged to be in compliance with the Secretary of Interior’s Standards for the Treatment of Historic Properties. Only those projects that are “encroachments” (not in compliance) are submitted to the New Jersey Historic Sites Council for review.

1997 amendments include updated citations and definitions to conform with Federal historic preservation programs, increased public notification and participation procedures, clearer documentation requirements for demolition applications, a name change to the “Historic Preservation Office” and various corrections to typographical errors.

Reprinted here are the selections of the Procedures that pertain to review and authorization of public projects: Subchapter 1, “General Provisions “(which includes definitions) and Subchapter 7, “Review Procedures...” (which includes the criteria for determining an encroachment). The text is exactly the same as legally published.

Applications for project authorization are available from the Historic Preservation Office, P.O. Box 404, Trenton, NJ 08625-0404. If you have any questions, please contact the Technical Information and Regulatory Services Section, Historic Preservation Office, at (609) 984-0140.

NEW JERSEY REGISTER OF HISTORIC PLACES ACT LAWS OF 1970, CHAPTER 268

An Act to establish a New Jersey Register of Historic Places and prescribing the powers, duties and functions of the Department of Environmental Protection and the Division of Parks and Forestry and the Historic Sites Council in connection therewith.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

NEW JERSEY

DEPARTMENT OF

ENVIRONMENTAL

PROTECTION

●

DIVISION OF

PARKS &

FORESTRY

●

HISTORIC

PRESERVATION

OFFICE

C. 13:1B-15.128 NEW JERSEY REGISTER OF HISTORIC PLACES.

1. A New Jersey Register of Historic Places is established in the Division of Parks and Forestry of the Department of Environmental Protection to consist of a permanent record of areas, sites, structures and objects within the State determined to have significant historical, archeological, architectural or cultural value.

C. 13:1B-15.129 ESTABLISHMENT OF CRITERIA FOR APPROVAL OF AREAS, SITES, ETC., FOR INCLUSION IN REGISTER.

2. The Commissioner of Environmental Protection, with the advice and recommendations of the Historic Sites Council, shall establish criteria for receiving and processing nominations and approval of areas, sites, structures and objects, both publicly and privately owned, for inclusion in the Register of Historic Places, together with appropriate documentation thereof to be included and maintained in the register and for the public identification of such historic places by appropriate plaques or documentation. The owners of all areas, sites, structures or objects approved for inclusion in the register shall be provided with appropriate written notification thereof by the department.

C. 13:1B-15.130 EXPENDITURE OF STATE FUNDS.

3. No State funds shall be expended for, or in aid of acquisition, preservation, restoration or maintenance as a historic place or site of any area, site, structure or object unless and until the same shall be approved for inclusion in the Register of Historic Places, but this section shall not apply to presently owned or maintained State Historic Sites.

Note: The New Jersey State Review Board for Historic Sites has superseded the Historic Sites Council with regard to recommending properties to the New Jersey Register.

C. 13:1B-15.131 PRIOR AUTHORIZATION REQUIRED FOR CERTAIN PROJECTS.

4. The State, a county, municipality or any agency or instrumentality of any thereof shall not undertake any project which will encroach upon, damage or destroy any area, site structure or object included in the Register of Historic Places without application to, and the prior written authorization or consent of, the Commissioner of Environmental Protection. The Commissioner shall solicit the advice and recommendations of the Historic Sites Council in connection with any such application and may direct the conduct of a public hearing or hearings thereon prior to granting or denying authorization or consent. The failure of the Commissioner to authorize, consent or deny any such application within 120 days of application therefor shall constitute his consent thereto.

C. 13:1B-15.132 APPROPRIATION FOR ESTABLISHMENT AND MAINTENANCE OF REGISTER.

5. There is appropriated to the Department of Environmental Protection for the purpose of establishing and maintaining the New Jersey Register of Historic Places such sums as shall be included in any annual or supplemental appropriation act.
6. This act shall take effect immediately. Approved November 4, 1970. Procedures Concerning the New Jersey Register of Historic Places, N.J.A.C. 7:4 [Excerpts regarding project authorization] SUBCHAPTER 1. GENERAL PROVISIONS

7:4-1.1 PURPOSE

This chapter shall constitute the rules of the Department of Environmental Protection concerning the preservation of the State's historic, architectural, archaeological, engineering, and cultural heritage in accordance with the New Jersey Register of Historic Places Act, N.J.S.A. 13:1B-15.128 et seq.

7:4-1.2 SEVERABILITY

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

7:4-1.3 DEFINITIONS

The following words and phrases, when used in this chapter, shall have the following meanings unless the content clearly indicates otherwise.

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

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

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

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

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

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

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

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

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

1. It was present during the period of significance, and possesses historic integrity reflecting its character at that time or is capable of yielding important information about the period; or
2. It independently meets the New Jersey Register criteria set forth in N.J.A.C. 7:4-2.3.

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

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

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

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

and limited activity sites; irrigation systems; large estates, farms, ranches, or plantations; transportation networks; and large landscaped parks.

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

“*Encroachment*” means the adverse effect upon any district, site, building, structure or object included in the New Jersey Register resulting from the undertaking of a project by the State, a county, municipality or an agency or instrumentality thereof, as determined by application of the Criteria for Determining Whether an Undertaking Constitutes an Encroachment set forth in N.J.A.C. 7:4-7.4 and the Secretary of the Interior’s Standards for the Treatment of Historic Properties (36 C.F.R. Part 68) and “Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings” (guidelines issued by the National Park Service, incorporated herein by reference and available from the Historic Preservation Office, P.O. Box 404, Trenton, New Jersey 08625-0404) or subsequent amendments thereto adopted by the Secretary of the United States Department of the Interior and the National Park Service.

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

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

“*Historic Sites Council*” means the body within the Division of Parks and Forestry, Department of Environmental Protection established by P.L. 1967, c. 124, N.J.S.A. 13:1B15.108 et seq. and amended by P.L. 1984, c. 562, N.J.S.A. 13:1B-15.111 et seq., for the purpose of recommending policies to the Commissioner for the following actions; the acquisition, development, use, improvement and extension of historic sites (including archaeological sites); the development of a

broad historic sites preservation program on a Statewide and local basis; the identification, authentication, protection, preservation, conservation, restoration, and management of all historic sites within the State; and the provision of advice on encroachments by the undertakings of State, county or municipal governments or any agency or instrumentality thereof on properties listed in the New Jersey Register.

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

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

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

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

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

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

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

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

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

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

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

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

“*Preservation*” means the act or process of applying measures to sustain the existing form, integrity and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than

extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

“*Project*” means a planned undertaking.

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

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

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

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

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

“*State Historic Preservation Officer*” means the Commissioner of the Department of Environmental Protection, who is designated by

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

“*State Historic Preservation Plan*” means the document that sets forth long-range goals of the State Historic Preservation Program and describes specific ways that the Historic Preservation Office will work to achieve those goals. The State Historic Preservation Plan organizes primary preservation activities—identification, evaluation, registration, and treatment of historic properties—in a logical sequence. The plan is based on 12 statewide “historic contexts,” which are thematic study units such as “Initial Colonial Settlement, A.D. 1630-A.D. 1775.” Goals and priorities are established for the historic properties associated with each historic context.

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

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

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

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

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

Subchapter 7. Review Procedures for Projects Encroaching upon New Jersey Register Properties

7:4-7.1 APPLICATION PROCEDURE FOR ENCROACHMENT AUTHORIZATION

(a) During the earliest stage of planning for any undertaking and before taking any action that could result in physical effect on a proper-

ty listed in the New Jersey Register, the State, a county, municipality or an agency or instrumentality thereof shall:

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

- (b) If there is no property on the New Jersey Register in the area of the undertaking's potential impact, the undertaking may commence without further review and approval by the Department pursuant to the Act and this chapter.
- (c) If there is property on the New Jersey Register in the area of the undertaking's potential impact, the State, a county, municipality or an agency or instrumentality thereof shall submit an application to the Department for project authorization.
- (d) The application shall be prepared by the State, county, municipality or agency or instrumentality thereof planning the undertaking or its authorized representative on forms available from the Department and shall include: maps, photographs, plans, specifications, and proposed agreements sufficient to completely describe the planned undertaking. If demolition of all or a substantial portion of a property is proposed, the application shall include a structural assessment and an evaluation of whether the property could be reasonably repaired, to be prepared by an architect or engineer with demonstrated experience with historic properties. In addition, the application shall include a complete list of owners of registered properties that would be directly affected by the undertaking and a complete list of local historical societies and historic preservation

commissions in the area of the undertaking's potential impact. The application shall also include a list of all affected local government units, any agencies or instrumentalities thereof concerned with historic preservation, and any Statewide organization and local organization specifically concerned with historic preservation in the area of the undertaking's potential impact. The list of property owners shall be the list of private and public property owners (including right-of-way owners) named in official municipal tax records and maps as of the date of the application's submission and shall be notarized by the appropriate municipal official. An application for relocating a property on the New Jersey Register shall also include the information and documentation required in N.J.A.C. 7:4-3.2(c).

7:4-7.2 REVIEW OF AN APPLICATION FOR PROJECT AUTHORIZATION

- (a) Within 30 days of receipt of an application for project authorization, the Department shall review the application for technical and professional completeness and sufficiency and shall notify the applicant in writing as to whether or not the application is complete and sufficient. If the application or material is not complete and sufficient, the Department shall notify the applicant in writing of what information is needed.
- (b) Pursuant to N.J.S.A. 13:1B-15.131, the Department shall have 120 days to review an application for project authorization. The 120 day review period shall commence on the date that the Department receives an application that is technically and professionally complete and sufficient. In the event that the Department does not authorize, consent to, conditionally authorize or consent to, deny, or temporarily deny an application within the 120 day period, the application shall be deemed to have been approved. No waiver or extension of the 120 day period shall be allowed. This prohibition shall not apply in those cases in which the Commissioner issues a temporary denial based on a need for additional information. See N.J.A.C. 7:4-7.2(e)7iii.

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

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

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

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

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

1. Within 15 days of receipt of a notice that the undertaking constitutes an encroachment, an applicant shall pro-

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

2. The application for project authorization shall be scheduled to be reviewed by the Historic Sites Council at a regularly scheduled meeting or a special public meeting pursuant to (e)1 above. At least 21 days before the regularly scheduled or special meeting date, the

Department shall determine the agenda for the Council meeting and consistent with the Open Public Meeting Act, N.J.S.A. 10:4-6 et seq. send written notification of the meeting to:

- i. The applicant;
 - ii. The chief elected local official of the municipality in which the proposed undertaking would occur;
 - iii. Two major circulation newspapers, including a major circulation newspaper in the area of the municipality in which the proposed undertaking would occur;
 - iv. Local historical societies and historic preservation commissions, as listed by the applicant in the application for authorization pursuant to N.J.A.C. 7:4-7.1(d);
 - v. All affected local government units, any agencies or instrumentalities thereof concerned with historic preservation, and any recognized organization specifically concerned with historic preservation in the State and in the area of the undertaking's potential impact as listed by the applicant in the application for authorization pursuant to N.J.A.C. 7:4-7.1(d);
 - vi. Owners of registered properties that would be directly affected by the undertaking, as listed by the applicant in the application for project authorization pursuant to N.J.A.C. 7:4-7.1(d). For an application where more than 25 owners would be directly affected by the undertaking, the Department may publish a public notice to property owners concerning the Council's meeting instead of individually notifying all property owners. Such public notice shall be published 21 days before the scheduled meeting date; and
 - vii. Interested parties who have advised the Department in writing of their interest in the application.
- 3.** If an applicant wishes to withdraw an application for project authorization, the applicant shall notify the Department in writing of said withdrawal and shall also immediately notify all parties listed by the applicant in the application for project authorization pursuant to N.J.A.C. 7:4-7.1(d) and interested parties who have advised the Department in writing of their interest in the application, pursuant to (c)1 above. If a withdrawal is
- within 48 hours of a regularly scheduled or special meeting of the Historic Sites Council and if it is not possible for all people to be notified of the withdrawal, then the Historic Sites Council, at its discretion, may accept public comment on the withdrawn application on the day for which the application was scheduled. Such comments may be considered if pertinent to a new application on the same encroachment.
- 4.** The Historic Sites Council shall meet to review the application for project authorization and evaluate the encroachment using the criteria set forth in N.J.A.C. 7:4-7.4 and the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. Part 68) and "Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (guidelines issued by the National Park Service, incorporated herein by reference and available from the Historic Preservation Office, P.O. Box 404, Trenton, New Jersey 08625-0404) or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior and the National Park Service. The Council shall also consider the following:
- i. The public benefit of the proposed undertaking;
 - ii. Whether or not feasible and prudent alternatives to the encroachment exist; and
 - iii. Whether or not sufficient measures could be taken to avoid, reduce or mitigate the encroachment.
- 5.** The Historic Sites Council shall submit written recommendations to the Commissioner.
- 6.** In addition to considering the recommendations of the Historic Sites Council, the Commissioner may direct the conduct of a public hearing on the application prior to granting or denying authorization of the encroachment.
- 7.** Within the 120 day review period under (b) above, the Commissioner shall transmit to the applicant a written decision with specific reasons therefor which shall either:
- i. Authorize or consent to the encroachment as described in the application;

- ii. Authorize or consent to the encroachment with conditions. The conditions may include, but are not limited to, placement of a preservation covenant in the deed for the property in the event of the conveyance of any interest in the property; marketing of the historic property over a reasonable period of time; recordation of the historic property to the standards and approval of the Historic American Buildings Survey or Historic American Engineering Record (HABS/HAER) through photographs, drawings and written narrative; archaeological survey or data recovery; salvage of significant architectural features; and revisions to the architectural plans or other conditions that would enable the project to meet the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. Part 68) and "Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (guidelines issued by the National Park Service, incorporated herein by reference and available from the Historic Preservation Office, P.O. Box 404, Trenton, New Jersey 08625-0404) or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior and the National Park Service, or other-wise avoid, reduce or mitigate the encroachment.
- (l) The applicant shall respond to the conditions within 60 days of the issuance of the Commissioner's decision. If the applicant agrees in writing that all the conditions are acceptable and will be met, the undertaking may proceed. If the applicant does not respond within 60 days or does not agree with all the conditions, the Commissioner shall deny the application for project authorization. Prior to the undertaking, the applicant shall submit to the Department written and photographic documentation or revised final architectural plans and specifications to show how the conditions of the approval have been or will be satisfied. Upon completion of the undertaking, the applicant shall document to the satisfaction of the Department that the applicant has complied with all the conditions;
- iii. Deny the application for project authorization temporarily based on such factors as need for additional information, exploration of additional alternatives for avoidance or mitigation of the encroachment, damage, destruction or other adverse effects.

The applicant shall respond to the Department within 60 days from the date of issuance of a temporary denial. In the event that no response is received by the Department within 60 days, the Commissioner shall deny the application. If the applicant submits a complete response including all information requested by the Department, it shall be within the discretion of the Department to refer additional information to the Historic Sites Council, and the Department shall make a final determination within 60 days after receipt of the response; or

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

7:4-7.3 EMERGENCY UNDERTAKINGS

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

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

7:4-7.4 CRITERIA FOR DETERMINING WHETHER AN UNDERTAKING CONSTITUTES AN ENCROACHMENT OR WILL DAMAGE OR DESTROY THE HISTORIC PROPERTY

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

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

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

1. The registered property is of value only for its potential contribution to archaeological, historical or architectural research, and when such value can be substantially preserved through the conduct of appropriate research and such research is conducted in accordance with applicable professional standards and guidelines;
2. The undertaking is limited to the preservation, rehabilitation, restoration, or reconstruction of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. Part 68) and "Guide-lines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (guidelines issued by the National Park Service, incorporated herein by reference and available from the Historic Preservation Office, P.O. Box 404, Trenton, New Jersey 08625-0404) or subsequent amendments thereto, adopted by the Secretary of the United States Department of the Interior; and the National Park Service; or
3. The undertaking is limited to the acquisition, transfer, sale, lease, easement on, or an agreement or other permission allowing use of a registered property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.



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