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ENVIRONMENTAL PROTECTION

DELAWARE AND RARITAN CANAL COMMISSION

Regulations for the Review Zone of the Delaware and Raritan Canal State Park

Proposed Repeal and New Rules: N.J.A.C. 7:45

Authorized By: Lisa P. Jackson, Commissioner, Department of Environmental Protection
David DelVecchio, Chairman, Delaware and Raritan Canal Commission

(as to N.J.A.C. 7:45-5, 6 and 13).

Authority: N.J.S.A. 13:13A-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: _____

Proposal Number: PRN 2008-____

A **public hearing** concerning this rule proposal, will be held on Tuesday, January 5, 2009, at 10:00 a.m. at:

First Floor Public Hearing Room

Department of Environmental Protection

401 E. State Street

Trenton, New Jersey

and on _____, January __, 2009, at _____, at:

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Directions to the Department's Public Hearing Room may be found at the Department's website address at <http://www.state.nj.us/dep/where.htm>.

Submit written comments no later than [60 days after publication] to:

Alice A. Previte, Esq.

Attn: DEP Docket Number _____

New Jersey Department of Environmental Protection

Office of Legal Affairs

401 East State Street, 4th Floor

P.O. Box 402

Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) and the Delaware and Raritan Canal Commission (Commission) request that commenters submit comments on disk or CD as well as on paper. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. Microsoft Word 6.0 or above is preferred. Macintosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

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The agency proposal follows:

Summary

Since the Department and the Commission have provided a 60-day comment period on this proposal, the proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Delaware and Raritan Canal State Park Law of 1974, N.J.S.A. 13:13A-1 et seq. (the Act) created the Delaware and Raritan Canal State Park (Park) and established the Commission to plan for and protect the Park. The Act authorizes the Commission to prepare and adopt a master plan for the development and protection of the Park, and to delineate a review zone within which the Commission will review public and private projects that might adversely affect the Park, to determine their conformity with the master plan. The Act, at N.J.S.A. 13:13A-10, authorizes the Department, with the approval of the Commission, to promulgate rules and regulations for the use and protection of the Park. Accordingly, with the exception of the proposed rules relating to fees and general permits, the Department proposes the within repeal and new rules. In 2007, the Act was amended to give the Commission authority to establish and charge fees in accordance with a fee schedule adopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and adopt rules and regulations that identify the types of projects eligible for a general permit and establish the criteria for the approval or rejection of a general permit. (N.J.S.A. 13:13A-12h and 14e) Accordingly, the Commission proposes the within rules regarding fees (N.J.A.C. 7:45-13) and general permits (N.J.A.C. 7:45-5 and 6).

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The rules at N.J.A.C. 7:45 establish the procedures, standards, and scope of review by the Commission to implement its responsibility under the Act to review public and private projects that might have an adverse effect on the Park.

The proposed new rules, entitled Regulations for the Review Zone of the Delaware and Raritan Canal Park, are the first major update to the Commission's Regulations since the re-adoption of the rules in 1990, when the provision for stream corridor protection was added. The Commission has discussed the proposed changes to the rules at a number of its regularly scheduled meetings. In addition, Commission staff have discussed the proposed changes and their potential impacts with many members of the development community with whom they frequently meet regarding specific applications. Lastly, the Commission scheduled and advertised a specific meeting inviting the public to discuss the proposed changes to the rules. This meeting was held on April 10, 2007 at the Delaware and Raritan Canal State Park Office in Kingston (a central location along the 60-mile length of the Park). Notice of this meeting was posted on the Commission's website and sent to 14 newspapers that serve the geographic area that includes the Park. No members of the public attended.

N.J.A.C. 7:45-1 General Information

N.J.A.C. 7:45-1.1 Purpose

Proposed N.J.A.C. 7:45-1.1 describes the purpose of the rules as authorized by the Act. The proposed new rules are intended to encourage consideration of the natural, historic, and recreational resources of the Park and its environs. One of the objectives of the Master Plan is

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that the Park's historic character is derived from the context through which the Canal flows, and that it should be preserved in a manner that reflects its historic nature. Proposed N.J.A.C. 7:45-1.1 reflects the consideration of historic resources in the objectives of the Master Plan by specifically encouraging consideration of the historic resources of the Park at the earliest stages of land-use planning. The existing rule does not expressly state that historic resources are to be considered.

N.J.A.C. 7:45-1.2 Forms and information

Proposed new N.J.A.C. 7:45-1.2 identifies where interested persons can obtain or submit forms, and the addresses to which applications are to be submitted. If a form is not submitted to the appropriate address, as identified in the rule, it is not deemed received, for purposes of calculating time periods or deadlines elsewhere in the rules. Only if a document is submitted to the Commission at its proper address can the Commission be assured of receiving it in a timely fashion. Documents delivered to another address may be delayed in reaching the Commission, if they reach the Commission at all. It would be improper for the timelines in the rules (for example, proposed N.J.A.C. 7:45-3.4) to begin running against the Commission, when a document has been improperly delivered.

N.J.A.C. 7:45-1.3 Definitions

Proposed N.J.A.C. 7:45-1.3 contains definitions of terms that are used in the new rules. Proposed definitions of "Administrative Procedure Act" or "APA," "Canal," "Commission," "Department," "Master Plan," "minor project," "municipal approving agency," "one hundred year flood line," "Park," "private project," "Review Zone," "road," and "structure" are the same

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as in the existing rules at N.J.A.C. 7:45-1.2. In addition, the Department proposes definitions of the terms “compaction,” “design engineer,” “disturbance,” “drainage area,” “erosion,” “general permit,” “impervious surface,” “individual approval,” “infiltration,” “mitigation,” “person,” “pollutant,” “preserved land,” “recharge,” sediment,” “soil,” “stormwater,” “stormwater runoff,” “stormwater management basin,” and “stormwater management measure.”

“Compaction,” “design engineer,” “drainage area,” “erosion,” “infiltration,” “person,” “recharge,” “sediment,” “soil,” “stormwater,” “stormwater management basin,” and “stormwater runoff” are defined as the same terms are defined at N.J.A.C. 7:8-1.3 of the Department’s Stormwater Management rules, on which some of the proposed rules are based.

The proposed definition of “disturbance” is related to the proposed expanded definition of “major project,” discussed below. “Disturbance” means construction or any other human activity that disturbs the surface of the land or the soil below. The proposed definition includes a partial list of activities as examples of disturbance.

A “general permit” is a permit under which the Executive Director of the Commission can issue authorizations for individual specific projects that meet the conditions established in the rules. The rules governing issuance of general permits are set out at N.J.A.C. 7:45-5. The general permits at proposed N.J.A.C. 7:45-6 are those projects that the Commission determined would not have any significant adverse impact on the Park and, therefore, do not need approval under an individual permit. This definition is proposed because the 2007 amendments to the Act gave the Commission the authority to issue general permits, and adopt rules and regulations that identify the types of projects eligible for a general permit and establish the criteria for the

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approval or rejection of applications for authorizations under the general permit. (See N.J.S.A. 13:13A-14.)

The proposed definition of “impervious surface” means a surface covered with material that has made the surface highly resistant to infiltration by water. The proposed definition is similar to the definition of “impervious surface” in the Residential Site Improvement Standards, promulgated by the Department of Community Affairs at N.J.A.C. 5:21-1.4. The definition recognizes that some surfaces commonly referred to as “impervious” for stormwater management purposes do allow some minor groundwater recharge (for example, through pavement cracks). This definition is also similar to the definition of “impervious surface” at N.J.A.C. 7:8-1.3 of the Stormwater Management rules, but expanded to include examples of impervious surface.

An “individual approval” is an approval issued by the Commission after application and review is made in accordance with proposed N.J.A.C. 7:45-2 through 4, and that is not a general permit.

As proposed, the definition of “mitigation” means compensatory actions proposed by applicants for the loss or adverse impact of a particular natural, historic or recreational resource. In considering a mitigation proposal, the Commission prefers that it be similar in type and location to the resource being adversely impacted, but will consider other proposals provided that the mitigation would contribute toward meeting the goals of the Master Plan and these proposed regulations. This definition is proposed because proposed N.J.A.C. 7:45-8.4, 10.3, 12.4, 12.6, and 12.7 require mitigation for projects that result in adverse impacts.

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A “pollutant” is 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 and industrial, municipal, agricultural, and construction waste or runoff or other residue discharged directly or indirectly to the land, groundwaters or surface waters of the State, or to a domestic treatment works. “Pollutant” includes both hazardous and nonhazardous pollutants. This definition is based on the definition of “pollutant” in the New Jersey Pollutant Discharge Elimination System (NJPDDES) rules at N.J.A.C. 7:14A-1.2, and is the same as the definition of “pollutant” in the Stormwater Management rules at N.J.A.C. 7:8-1.3. The term “pollutant” is used at N.J.A.C. 7:45-8, Stormwater Runoff and Water Quality Impact Review, which is based on the Stormwater Management rules at N.J.A.C. 7:8.

“Preserved land” is a new term that 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 organization for natural resource, forestry, wildlife, passive recreation, historic, cultural, or open space use, or to sustain water quality and living resource values. This definition is proposed because application requirements imposed in N.J.A.C. 7:45- 9.5 and 12.4 require preserving natural areas.

A “stormwater management measure” is any structural or nonstructural method intended to control or reduce stormwater runoff. Control or reduction of stormwater runoff includes control or reduction of the quantity of stormwater runoff (for example, control or reduction of

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runoff volume, rate, or velocity), control or reduction of one or more pollutants in stormwater runoff (or of other characteristics of stormwater runoff that affect receiving water quality), or both. This definition is based on the definition of “stormwater management measure” in the Stormwater Management rules at N.J.A.C. 7:8-1.3.

The proposed definitions of “Act,” “governmental project,” “major project,” and “stream corridor” are modified from the existing definitions.

“Act,” as proposed, refers only to the codified law, rather than to P.L. 1974, c. 114. Thus, it includes the amendments to the Act at P.L. 2007, c. 191 and J.R. 11.

The proposed definition of “governmental project” includes the undertaking of a public disturbance or development, in addition to improvement, construction or land-use change, set forth in the existing definition.

The existing definition of “major project” is a project partly in Zone B (and not at all in Zone A) that will, since January 1, 1980, cumulatively cover one acre of land with impervious surface; or a project partially in Zone A, that involves the construction of four or more dwelling units or no dwelling units, but one-quarter acre or more of impervious surface. Zone A is the area closest to the Canal. The remainder of the Review Zone is in Zone B.

As proposed, the definition of “major project” is expanded from the existing definition. For both Zone A and Zone B, a “major project” is one that results in:

- Since January 11, 1980, the cumulative coverage of one-quarter acre of land with impervious surface; or
- The disturbance of one acre or more of land; or

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- The disturbance of one half acre or more of existing impervious or significantly disturbed areas, for the purposes of construction, if the project site either drains into the Canal; or is located within a drainage area of a stream that discharges into the Canal from the point where the stream feeds into the Canal up to the point at which the stream drains less than 50 acres, including drainage areas of any tributary to those streams up to the point at which the tributary drains less than 50 acres.

In Zone A, a “major project” includes any structure with a height greater than 40 feet above existing grade.

The proposed definition reduces the threshold for impervious surface from one acre to one quarter acre, because that is the threshold for a major development under the Department’s Stormwater Management Rules at N.J.A.C. 7:8. Sound stormwater management, protection of water quality of surface runoff, and recharge of groundwater for a significant amount of developable land within the Commission’s Review Zone were not addressed under the existing rules because of the one-acre impervious surface threshold in the existing definition of major project. The change to one-quarter acre will help address the impacts of previously unregulated stormwater discharges.

The proposed definition of “major project” further includes the disturbance of one acre or more of land as a new threshold. This standard is the same as that required by the Department’s Stormwater Management Rules at N.J.A.C. 7:8. Previously, the Commission’s review of projects was limited to those with proposed new impervious surface. By expanding its purview to review of any land disturbance (i.e., tree removal or re-grading of steep slopes), the Commission will more fully ensure protection of stream corridors within the Canal’s drainage

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basin, which will in turn further protect the water quality of the Canal. The proposed definition also includes projects involving the disturbance of one half acre of previously developed lands within the Review Zone. This change is being proposed to address the potential impacts on the water quality of the Canal from existing impervious areas proposed for redevelopment.

Structures with a height greater than 40 feet within Zone A are added to the definition of “major project” because of the significant visual impact that tall structures will have, even if their footprint is small, such as cell towers or utility poles. Because of their potentially adverse visual impact on the Park, these types of projects should comply with the stricter standards for visual impact required for major projects.

The existing definition of “stream corridor” includes any stream designated in N.J.A.C. 7:45-6.1(a) from the point where the stream feeds into the Park up to the point at which the stream drains less than 50 acres, plus any tributary to those streams, from the point at which it feeds into the designated stream up to the point at which the tributary drains less than 50 acres. The definition of stream corridor in the existing rule also includes all of the land within the 100-year flood line on either side of that portion of the designated stream or tributary that is in the stream corridor and all of the land within a 100-foot-wide buffer around the 100-year flood line on either side of that portion of the designated stream or tributary that is in the stream corridor.

The proposed definition of “stream corridor” does not designate specific streams for regulation, as the existing definition did by reference to N.J.A.C. 7:45-7.1(a) and the 18 streams named in that subsection (Lockatong Creek, Wickecheoke Creek, Alexauken Creek, Swan Creek, Moore’s Creek, Fiddler’s Creek, Jacob’s Creek, Shabakunk Creek, Little Shabakunk Creek, Shipetauken Creek, Duck Pond Run, Stony Brook, Millstone River, Heathcote Brook,

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Beden's Brook, Simonson Creek, Six Mile Run, and Ten Mile Run). The proposed definition encompasses all water courses that enter the Park. As a result, in addition to unnamed water courses not previously regulated, the following named streams will be regulated in the proposed rules for stream corridor impact, by virtue of their falling within the proposed definition:

Randolph Brook, Cedar Grove Brook and One Mile Run in Somerset County and Gold Run in Mercer County.

Under the proposed definition, all water courses that enter the Park will be subject to the Commission's regulations on stream corridors. The definition distinguishes between those water courses that discharge into the Canal, and those that enter the Park but do not discharge into the Canal. For those water courses that enter the Park, but do not discharge into the Canal, the stream corridor consists of 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. These limits are the same as those found in the existing definition. For those water courses that discharge into the Canal, the stream corridor consists of either the water course and its tributaries including the 100-year floodplain plus a 100-foot buffer on both sides of the 100 year flood plain, or the water course and its tributaries plus 300 feet along both sides of the water course or tributary, measured from the top of the water course's banks, whichever is greater. The regional extent of a stream corridor (the point at which the water course drains over 50 acres) remains the same as the existing definition.

The addition of the minimum buffer adjacent to those water courses that drain into the Canal is being proposed to protect the water quality of the Canal, which is a source of water for approximately 1.5 million people. These modifications will continue the Commission's practice

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of using best management practices to protect stream corridors (and all of their associated ecological benefits) by providing a minimum buffer to those water courses where the floodplain is confined to the stream bed and banks, and the water course drains onto the Canal. Further justification of the expansion of the stream corridor's limits and how it affects the scope of review can be found at the Summary of proposed N.J.A.C. 7:45-9, below.

The proposed definitions do not include "Class II Watershed," "General Development Plan," "flood hazard area," and "net fill," which are defined in the existing rules. None of the terms is used in the proposed new rules.

"Class II Watershed" in the existing rules means a watershed identified by the Commission as having no history of significantly mingling with the Canal water under either normal or storm conditions. Under the existing rules, Class II Watersheds were not reviewed by the Commission for water quality standards. Under the proposed new rules, the Commission will review all major projects for their impact on water quality as well as quantity, as the quantity and quality of runoff from these projects will directly affect the Park. In accordance with the Act, the Commission is authorized to ensure that both the quantity and quality of surface water runoff to the Park from surrounding developments do not adversely affect the Park. The Commission's review of a project's conformance with the Commission's water quality standards is also consistent with the Department's Stormwater Management rules, and with municipal ordinances for stormwater management.

The definition for "General Development Plan" is not in the proposed new rules because the proposed new rules do not include review of general development plans. Similarly, "flood hazard area" is not defined because this zone is not used by the Commission in determining

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jurisdiction or impact and is, therefore, not relevant to the rules. A definition for “net fill” is not proposed because Commission does not use this standard in its review of drainage impact or stream corridor impact.

N.J.A.C. 7:45-1.4 Master Plan of the Delaware and Raritan Canal State Park

Proposed N.J.A.C. 7:45-1.4 describes the objectives of the Master Plan of the Delaware and Raritan Canal State Park, and is continued from existing N.J.A.C. 7:45-1.4.

N.J.A.C. 7:45-2 Applicability

Proposed new Subchapter 2 is intended to organize and clarify the rules regarding the Commission’s jurisdiction and scope of review.

N.J.A.C. 7:45-2.1 Exemption, Approval, Authorization or Waiver Requirements

Proposed new N.J.A.C. 7:45-2.1 requires applicants with governmental or private projects, as defined in N.J.A.C. 7:45-1.2, to obtain either an exemption letter 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, or a waiver as described at N.J.A.C. 7:45-12.

N.J.A.C. 7:45-2.2 Exemption Letters

The existing rules do not provide for exemption letters. Proposed N.J.A.C. 7:45-2.2 identifies the conditions under which a project is considered exempt from Commission review

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and approval. A project is exempt from review and approval if it is located outside of the Review Zone, if it is located in Zone B but is not considered “major,” or if it is a non-governmental project that does not require a municipal permit or approval. An exemption letter shall lapse if construction is not complete within five years from the date of the exemption letter or if the municipal permit or approval expires, lapses, or is revoked.

The term of five years for an exemption letter is based upon the length of time that a Commission’s individual approval is valid. The five-year term is consistent with Department land-use permits, such as flood hazard area permits, freshwater wetlands permits, waterfront development permits, and CAFRA permits. It allows an applicant sufficient time to complete a project before the exemption expires. Moreover, after five years, the rules or site conditions may have changed such that the Commission would want to revisit the exemption.

The section is proposed because the Commission proposes to charge a fee to an applicant that requests a written jurisdictional determination as to whether a project is exempt from Commission review and approval. Previously, Commission staff provided these written jurisdictional determinations without charge.

N.J.A.C. 7:45-2.3 Scope of Review for Approvals, Authorizations and Waivers

This proposed new section is based on N.J.A.C. 7:45-1.3, Scope of review, in the existing rules. It has been expanded to include a scope of review for general permit authorizations, as proposed at N.J.A.C. 7:45-5 and 6. The heading of the proposed section is expanded to expressly refer to the types of review that the Commission undertakes.

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The scope of review for major projects in Zone A is unchanged from the existing rule. The scope of review for minor projects in Zone A has been modified from the existing rule. In addition to reviewing visual, historic and natural quality impact as well as stormwater runoff and water quality impact, the proposed rules include a review of stream corridor impact for minor projects in Zone A. The Commission has determined that any type of development or disturbance within stream corridors located in Zone A may adversely impact the water quality and ecological health of the Park.

The proposed review of stormwater runoff and water quality impact for minor projects in Zone A also differs from the existing rule. The existing rule states that submission requirements and stormwater management measures are significantly less rigorous for minor projects than for major projects, but are expected to comply with the general standards in the existing provision at N.J.A.C. 7:45-5 for water quality. The proposed new provision requires that minor projects in Zone A that involve 800 square feet or more of impervious surface, cumulatively since January 11, 1980, must be reviewed for stormwater runoff and water quality. The Commission has determined that development involving less than 800 square feet of impervious surface represents a de minimis increase and, therefore, does not require compliance with the standards of proposed N.J.A.C. 7:45-8.

The proposed scope of review for projects in Zone B is not changed from the existing rule. Major projects in Zone B are reviewed for stormwater runoff and water quality impact and for stream corridor impact. If any major project in Zone B is within one mile of the Park and has direct access to a road that enters Zone A, it is also reviewed for traffic impact.

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Finally, this proposed new section includes a new Table 1 entitled “Scope of Review by Project Type, within Review Zone.” The table illustrates the Commission review applicable to major and minor projects in Zones A and B. This table has been added for illustration.

N.J.A.C. 7:45-3. Application and Review Procedures for Individual Approvals

Proposed new Subchapters 3 through 6 will replace existing Subchapter 3, Certificate of Approval. The Act at N.J.A.C. 13:13A-14 gives the Commission the authority to authorize a project under a general permit, or issue an individual approval after formal Commission action. Proposed new N.J.A.C. 7:45-3 describes procedures for individual approvals, including application submission, preliminary staff review, Commission review, and Commission decision for private and governmental projects as well as State permits. Proposed new N.J.A.C. 7:45-4 describes the individual approvals. General permits are addressed at proposed new N.J.A.C. 7:45-5 and 6.

N.J.A.C. 7:45-3.1 General provisions

Proposed new N.J.A.C. 7:45-3.1(a) requires an applicant to submit sufficient information for a project requiring an individual approval in order for Commission staff to undertake a review. It states that application forms are available from the Commission and must be signed by both the applicant and the property owner. It has been the experience of the Commission that the applicant is often a contract purchaser and, as such, will be responsible for the implementation of the project as approved by the Commission. The current property owner must

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sign the application to ensure that he or she is aware of the project application if it is being proposed by a contract purchaser or any agent of the owner; thus, signatures from both are required. Proposed N.J.A.C. 7:45-3.1(b) allows an applicant to combine submission requirements for any project, provided all required information is shown thereon with sufficient clarity to be understood. This continues the provision at existing N.J.A.C. 7:45-2.1(b).

Under proposed N.J.A.C. 7:45-3.1(c), applications that are determined or deemed to be complete for review before these proposed new rules are adopted and effective will be reviewed under the existing rules. Applicants will not be required to re-design projects for which applications have been submitted and are complete for review prior to the time these new rules take effect. However, after the effective date of the within rules, if the applicant (or holder of an approval, if the approval or authorization under a general permit has been issued) requests that the Commission undertake a review, provide an extension, or conduct any activity for which a fee is charged in accordance with N.J.A.C. 7:45-12, the applicant (or holder of an approval) shall be subject to that fee. As discussed in the Summary of N.J.A.C. 7:45-12 below, the Commission's operations are fully funded by fees. Accordingly, is it inappropriate for some persons to be exempt from the fees to which others are subject. To allow this would be to require later applicants to subsidize those whose applications were submitted before the effective date of these rules.

Proposed N.J.A.C. 7:45-3.1(d) describes the information required on the 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

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for the project, and a brief description of the proposed project. The application must also include submissions as required by proposed N.J.A.C. 7:45-8, 9, 10, and 11, if applicable. Proposed N.J.A.C. 7:45-3.1(d) requires the level of detail and documentation for an application shall correspond to the size and likely impact of the proposed project. This will allow the Commission some flexibility in specifying submission requirements for smaller projects. The proposed rules do not continue existing, N.J.A.C. 7:45-2.5, Waiver of Submission Requirements.

N.J.A.C. 7:45-3.2 Application for review of a private or governmental project other than one sponsored by a State agency

Existing N.J.A.C. 7:45-2.2 requires an applicant to obtain approval from the appropriate municipal approving agency before the application can be reviewed by the Commission. The Act requires approval from the municipal approving agency before the Commission can deem an application complete. Proposed N.J.A.C. 7:45-3.2 continues to require submittal of a resolution of approval by the municipal approving agency, as well as the appropriate county agency. The addition of county approval is intended to better coordinate the various governmental reviews of a proposed project. Proposed N.J.A.C. 7:45-3.2, unlike existing section 2.2, does not require the application to be complete (municipal approval obtained) prior to Commission review. Commission staff often undertake project reviews simultaneously with the municipal approving agency. An application shall not be deemed complete, nor shall the Commission act on the application, until a resolution of approval of the proposed project is received from the appropriate municipal and county approving agencies.

N.J.A.C. 7:45-3.3 Pre-application conferences

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Proposed new N.J.A.C. 7:45-3.3 is similar to existing N.J.A.C. 7:45-2.4, Review of private projects, as it encourages applicants to submit and discuss projects early in their planning stages. The existing rule requires that Commission staff prepare a report of the pre-application conference. The proposed rule does not require a report, unless the applicant requests it. This change will save Commission staff considerable time when comments given at a pre-application conference are straightforward and no written report is requested.

N.J.A.C. 7:45-3.4 Review of decisions regarding private projects and governmental projects other than projects sponsored by a State agency

Proposed new N.J.A.C. 7:45-3.4 is similar to existing N.J.A.C. 7:45-2.6, and sets forth the timeline and requirements for the Commission's review and decision on an application for individual approval of a project. As in the existing rule, if the Commission does not determine within 30 days whether an application is complete, then it is deemed complete. The Commission proposes to make it clear that the 45 day period at N.J.A.C. 7:45-3.4(e) begins to run either when the application is declared complete or when it is deemed complete. Similarly, in proposed N.J.A.C. 7:45-3.4(f), a project will be deemed approved if no action is taken by 45 days after the application is deemed or declared complete. Last, under proposed N.J.A.C. 7:45-3.4(f) a project that is deemed approved is subject to any standard conditions that are applicable, generally, to any project of the type applied for. If there are such standard conditions applicable to projects of the type applied for, the conditions must be met before the approval will be issued, even if the project might otherwise be deemed approved by virtue of the Commission's failure to act.

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N.J.A.C. 7:45-3.5 Review of and decisions regarding governmental projects sponsored by State agencies

Review of governmental projects sponsored by State agencies is governed by proposed new N.J.A.C. 7:45-3.5. The existing rule at N.J.A.C. 7:45-2.8, Review of governmental projects, has been modified at N.J.A.C. 7:45-3.5 to reflect the mandates of the Act more accurately. The authority to review, approve, reject or modify any State project planned, or State permits issued in the Park is given to the Commission in the Act at N.J.S.A. 3:13A-13d and 14b. The Act at N.J.S.A. 13:13A-14(b) states, “the commission shall approve all State actions within the review zone that impact on the park, and insure [sic] that these actions conform as nearly as possible to the commission’s master plan and relevant local plans or initiatives.”

N.J.A.C. 7:45-3.6 Review of permits issued by a State department or agency

Review of permits issued by a State department or agency to another entity is governed by proposed N.J.A.C. 7:45-3.6. The substance of the proposed new rule is the same as existing N.J.A.C. 7:45-2.10, although some wording is changed.

N.J.A.C. 7:45-3.7 Notice of decision

Proposed N.J.A.C. 7:45-3.7 modifies existing N.J.A.C. 7:45-2.9, to reflect the mandates of the Act more accurately. The proposed rule modifies existing N.J.A.C. 7:45-2.9 by adding N.J.A.C. 7:45-3.7(c), whereby the Commission shall state in the Notice of Decision any conditions that must be met prior to an issuance of an individual approval. This is added to

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ensure that the applicant is fully aware of conditions that must be met before construction activities can begin. Proposed N.J.A.C. 7:45-3.7(d) provides for the Commission to institute a civil action in the event there is a violation or threat of a violation of the Commission's decision by a municipality. This provision is not changed from existing N.J.A.C. 7:45-2.9(c).

N.J.A.C. 7:45-4. Individual Approvals

N.J.A.C. 7:45-4.1 Issuance of an individual approval

Proposed new N.J.A.C. 7:45-4.1 is similar to existing N.J.A.C. 7:45-3.1, Certificate of Approval. The name of the approval issued by the Commission has been changed from Certificate of Approval to individual approval, in order to distinguish this type of approval from the newly proposed general permit authorization. Proposed N.J.A.C. 7:45-4.1(a) not only prohibits construction prior to issuance of an individual approval, as does existing N.J.A.C. 7:45-3.1(a), but also prohibits disturbance or pre-construction earth movement prior to issuance of an individual approval. This proposed provision ensures that any environmental damage associated with beginning phases of construction will not occur should the project be modified prior to issuance of an individual approval, or denied. An example of a prohibited activity would be the removal of existing vegetation that is protecting the ecological health of streams that impact the Canal. Such activities would not be allowed as part of a project, and shall not be undertaken prior to the project's approval.

Existing N.J.A.C. 7:45-3.1(b) requires a Certificate of Approval to explicitly state any conditions imposed by the Commission. The proposed new rule does not continue that

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requirement. Any conditions that must be met prior to the issuance of an individual approval will be contained in the Notice of Decision as specified at proposed N.J.A.C. 7:45-3.7(c). For conditions that must be met during or post construction, the individual approval shall state those conditions, as specified at proposed N.J.A.C. 7:45-4.1(b).

Proposed N.J.A.C. 7:45-4.1(b), (c) and (d), are similar to existing N.J.A.C. 7:45-3.1(c), (d), and (e). Proposed N.J.A.C. 7:45-4.1(b) requires an applicant to comply with the conditions on an individual approval. Proposed N.J.A.C. 7:45-4.1(c) requires that a holder not deviate from approved plans. Proposed N.J.A.C. 7:45-4.1(d) requires that the applicant allow the Commission or its agent access to the site for inspections. The proposed rules have been revised with minor wording changes; the term “applicant” has been changed to “holder of an approval,” to recognize that projects may change hands before they are built. In addition, as previously stated, the term “Certificate of Approval” has been changed to “individual approval.”

Existing N.J.A.C. 7:45-3.1(f) and (g) are replaced by proposed N.J.A.C. 7:45-4.1(e), (f) and (g). The existing rule stipulates that the Certificate of Approval shall lapse if construction does not commence within three years from the date of the Certificate and no extension is granted by the Commission; construction ceases for a period of one year; or the municipal permits or approvals expire, lapse, or are revoked. The existing rule further allows a Certificate of Approval to be extended for an additional period of three years if the applicant requests and demonstrates that no substantial change to the project is proposed, and the municipal approval for the project is valid for the period of the three-year extension. This mandatory extension does not allow the Commission to require an applicant to comply with provisions of the rules that are amended during the three-year extension period.

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The proposed new rule at N.J.A.C. 7:45-4.1(e) establishes that an individual approval is valid for a period of five years with no extensions, with the exception of large public projects, as outlined in proposed N.J.A.C. 7:45-4.1(f). This change is consistent with Department's newly adopted Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The proposed rule would also eliminate the provision at existing N.J.A.C. 7:45-3.1(f)2, by which an approval shall lapse if construction ceases for one year. The Commission determined that this provision is no longer necessary since this proposal would set the duration of an approval at a fixed time period of five years. As in the Department's Flood Hazard Area Control Act Rules, N.J.A.C. 7:13-9.4(c)2, if no regulated activities have taken place prior to the expiration of the individual permit, a new individual permit shall be issued only if the project is revised to comply with the rules in effect at the time of the new application. Similarly, if some regulated activities have occurred prior to the expiration of the individual permit, a new individual permit shall be issued only if the project is revised where feasible to comply with the requirements of the regulations in effect when the new application is submitted. In this way, an applicant may not have to completely redesign a project or remove what has been constructed.

Proposed N.J.A.C. 7:45-4.1(g) modifies existing N.J.A.C. 7:45-3.1(f)3 to state that individual approvals shall lapse if the municipal approval for the project expires, lapses or is revoked within the valid five year term of the individual approval.

Existing N.J.A.C. 7:45-3.1(h) states that when the Notice of Decision requires an easement affecting some or all of the property in question, a Certificate of Approval shall not be issued until the wording of the easement has been approved by the Commission or its delegate and until proof is submitted to the Commission or its delegate of the recording of such easement

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in the office of the appropriate County Clerk or Registrar of Deeds. Proposed N.J.A.C. 7:45-4.1(h) contains the same provisions, and adds that the proof of recording 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. Under the proposed rule, the applicant shall also provide the Commission with a complete copy of the recorded instrument within six months of the issuance of the instrument number. These additional requirements have been added to ensure that the Commission has the ability to determine that the correct document has been recorded.

Proposed new N.J.A.C. 7:45-4.1(i) is the same as existing N.J.A.C. 7:45-3.1(i), and requires the holder of an approval to notify the Commission at least 10 days prior to the start of construction.

Proposed N.J.A.C. 7:45-4.1(j) has no counterpart in the existing rules. It requires the holder of an approval to notify the Commission within 10 days of the completion of the construction or issuance of a Certificate of Occupancy. The Commission staff monitor approved projects for compliance with the Commission's rules. The proposed rule will enable the Commission to more easily monitor these projects.

Proposed new N.J.A.C. 7:45-4.1(k) has a similar purpose in requiring the holder of the approval to submit to the Commission the certificate of a licensed engineer, stating that the project was built in accordance with the approved plans. Again, this allows the Commission to timely confirm compliance with the Commission's rules.

N.J.A.C. 7:45-4.2 Modification of an individual approval

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Proposed new N.J.A.C. 7:45-4.2 allows an applicant to apply for a change to an existing individual approval through either minor or major modifications. The existing rules have no provision for review of modifications to approvals. Instead, an applicant is required to resubmit the project for approval in all cases. The proposed rule allows an approved project to be modified. The level of Commission review that is required depends on whether the modification is major or minor. The proposed rule categorizes modifications into major and minor, and prescribes the procedure for each category. Requests for both minor and major modifications must be made in writing and include sufficient information for the Commission to adequately review and consider the modification request.

N.J.A.C. 7:45-5 General Provisions for General Permits

Proposed N.J.A.C. 7:45-5 governs the issuance of general permits. The Legislature provided the Commission with that authority in a 2007 amendment to N.J.S.A. 13:13A-14e (P.L. 2007, ch. 142). Proposed new N.J.A.C. 7:45-5 lists the conditions required for the adoption of general permits by the Commission, and the basic contents of a general permit.

N.J.A.C. 7:45-5.1 Promulgation of general permits

Proposed N.J.A.C. 7:45-5.1(a) describes what a general permit is. Proposed N.J.A.C. 7:45-5.1(b) requires that the Commission must determine that the project will conform to the purposes of the Act, the Master Plan, and this chapter. In order to issue a general permit in accordance with N.J.S.A. 13:13A-14e, the Commission must meet the requirements of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The general requirements for

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general permits are set forth in Subchapter 5. The Commission is proposing specific general permits in Subchapter 6, discussed below.

Proposed N.J.A.C. 7:45-5.1(c) requires a general permit to contain specific limits, which the projects that are authorized under the general permit must meet. The limitations include a description of the types of projects and a description of the geographic area to which the general permit applies. Should a proposed project not meet one or more of the limitations, the project is not eligible for authorization under the general permit. Instead, an individual approval is required. A description of the geographic area is required as part of a general permit to ensure that the proposed project is within the Commission's Review Zone, and how that location will affect the visual impact of the project on the Park.

N.J.A.C. 7:45-5.2 Using a general permit to authorize specific projects

Proposed N.J.A.C. 7:45-5.2(a) describes how to apply for authorization under a general permit. The proposed rule requires an application form, site plans, survey and architectural elevations, if applicable. It also provides the Commission's website, where application forms may be obtained.

Proposed new N.J.A.C. 7:45-5.2(b) describes the procedures the Commission's Executive Director shall implement once an application for a general permit authorization has been received. Within 30 days after receiving the application, the Commission's Executive Director shall take one of the following actions: notify the applicant that the application is incomplete, and identify the missing information; notify the applicant that the project is not authorized under a general permit; or issue the authorization. If the applicant submits additional information in

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support of the application for authorization, under proposed new N.J.A.C. 7:45-5.2(c) the 30-day clock will begin again.

Proposed N.J.A.C. 7:45-5.2(d) requires Commission's Executive Director to prepare a report based on its review of an application, including a determination of completeness, denial or authorization. If the Commission's Executive Director takes no action on an application for authorization under a general permit, proposed N.J.A.C. 7:45-5.2(e) deems the application complete. The Commission's Executive Director would be unable to challenge the completeness of the application, but could review the application on the merits of the project. Thereafter, if the Commission's Executive Director does not act on the application for 10 days, it shall be deemed approved under N.J.A.C. 7:45-5.2(f). The general conditions applicable to authorizations for general permits of the type applied for would apply to the project.

Authorization under a general permit will remain valid under proposed new N.J.A.C. 7:45-5.2(g) for five years from the date of the authorization. Under proposed N.J.A.C. 7:45-5.2(h), if the municipal permits expire, lapse or are revoked within the five year period, the general permit authorization shall lapse. This is consistent with proposed N.J.A.C. 7:45-4.1(e) and (g), applicable to individual approvals.

A five-year expiration is proposed to ensure that projects adhere to amendments to the Commission's regulations if the project is not completed within five years from the date of the original authorization. The applicant will need to apply for a new authorization under the Commission's rules then in effect.

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Under proposed N.J.A.C. 7:45-5.2(i), the Commission's Executive Director shall deny authorization under a general permit and require that the applicant apply for an individual approval, if the Executive Director determines that any conditions that might be added in accordance with proposed N.J.A.C. 7:45-5.3(c) would not be sufficient to ensure compliance with the Act, the Master Plan and the regulations.

Proposed N.J.A.C. 7:45-5.2(j) requires that the limits of disturbance in each general permit apply to the entire site and not to only a portion of that site. This provision is made to avoid a cumulative adverse impact of multiple projects on one project site. An applicant for authorization under a general permit cannot, under proposed N.J.A.C. 7:45-5.2(j), divide a project area site into segments for the purposes of applying for a general permit authorization on one segment, and an individual approval on another, or applying for multiple general permit authorizations for different portions of the same project. A project must be treated as a whole.

Proposed N.J.A.C. 7:45-5.2(k) specifies that limits on disturbance under a general permit apply to both temporary and permanent disturbances. The provision is being proposed to make it clear to applicants that temporary disturbances must be included in the total disturbance of a project for a general permit authorization, because a temporary disturbance can have an adverse environmental impact in ecologically sensitive lands.

Proposed N.J.A.C. 7:45-5.2(l) requires that an applicant obtain an individual approval for a project that is not covered by an authorization under one or more general permits. This ensures that all proposed projects within the Commission's Review Zone conform to standards required by this chapter.

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N.J.A.C. 7:45-5.3 Conditions that apply to all general permit authorizations

There are three types of conditions at proposed N.J.A.C. 7:45-5.3(a) with which a project approved under a general permit authorization must comply. The project must meet the standard conditions for all general permits as described at proposed N.J.A.C. 7:45-5.3(b), the conditions of the general permit itself, and any project-specific conditions imposed in accordance with proposed N.J.A.C. 7:45-5.1(c).

Conditions at proposed N.J.A.C. 7:45-5.3(b) apply to all projects authorized under any general permit. The first condition is that the project shall not adversely affect properties listed or eligible for listing on the New Jersey or National Register of Historic Places (Register). This requirement is proposed in order to protect significant historic properties that may otherwise be adversely affected by a proposed project.

The final two standard conditions are that the project will not result in a violation of the Freshwater Wetlands Protection Act, N.J.S.A. 13:1B or the implementing rules at N.J.A.C. 7:7A, or the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50, or implementing rules at N.J.A.C. 7:13. These conditions are required in order to protect ecologically significant lands that may be adversely affected by a project receiving a general permit authorization.

As provided at N.J.S.A. 13:13A-14e, the Commission's Executive Director can authorize a project under a general permit, but impose conditions as part of the authorization. This is set forth at proposed N.J.A.C. 7:45-5.3(c). Such conditions would be those necessary for the project to conform to the goals of the Act, the Master Plan and the regulations, which include the protection of the Canal as a water supply, historic district, and recreation area.

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N.J.A.C. 7:45-5.4 Use of multiple general permit authorizations

Proposed new N.J.A.C. 7:45-5.4 lists three circumstances under which the Commission's Executive Director may authorize multiple projects under one or more general permits on a single site. The first requires that the conditions of each general permit be complied with. The second requires that the total disturbance and/or size of the projects located on the site shall be summed in order to determine that the limits of each general permit are met. The third requires that further authorizations for General Permit 2 (discussed below, in the Summary of Subchapter 6) shall not be approved if the cumulative impervious surface area of previously approved projects is equal to or greater than 800 square feet. Minor projects with more than 800 square feet of impervious surface, cumulatively since January 11, 1980, must be reviewed for stormwater runoff and water quality, in accordance with N.J.A.C. 7:45-2.3(c)iii. Accordingly, projects that would result in more than 800 square feet of impervious surface are not eligible for approval under a general permit. These provisions are required to ensure that the issuance of multiple general permits for more than one project on a single site will not adversely impact the site.

N.J.A.C. 7:45-5.5 Modification of a general permit authorization

In the event it becomes necessary to modify the authorization issued under a general permit, a holder of a general permit authorization may request either a major or minor modification, as set forth in proposed new N.J.A.C. 7:45-5.5. A minor modification is one that

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corrects a typographical error that does not affect the terms of the authorization issued under the general permit. All other modifications to an authorization under a general permit are major modifications. Requests for both minor and major modifications must be made in writing and include sufficient information for the Commission's Executive Director to adequately review and consider the modification request.

In order to obtain a major modification, the holder of the general permit authorization must go through the same procedure as required to obtain authorization under a general permit. The difference is, the applicant would address only those portions of the authorization that are affected by the proposed modification. Those 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. This provision will prevent duplicative application and review procedures. This is consistent with the process for a major modification under an individual approval at proposed N.J.A.C. 7:45-4.2.

N.J.A.C. 7:45-6. General Permits

Proposed new Subchapter 6 establishes two general permits: General Permit 1 for Maintenance and Repair of Existing Features, and General Permit 2 for Single Family Residential Additions. The types of projects described at N.J.A.C. 7:45-6.1 and 6.2 do not require individual approvals (full review and formal approval by the Commission) because their impact on the Park has been determined to be minimal. By issuing authorizations under the general permits, the Commission will increase permitting efficiency without jeopardizing the resources of the Park.

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N.J.A.C. 7:45-6.1 General Permit 1 – Maintenance and Repair of Existing Features

Proposed new N.J.A.C. 7:45-6.1 contains the terms and conditions for General Permit 1, projects in Zone A necessary to carry out the repair, rehabilitation, maintenance or reconstruction of a structure, road, utility line, or stormwater management measures and stormwater management basins lawfully existing prior to January 1980, the effective date of the first set of implementing regulations of the Act, or approved by the Commission under this chapter. Projects built after January 1980 that did not receive Commission approval do not qualify for authorization under this general permit. Applicants for these projects must apply for an individual approval.

Proposed new N.J.A.C. 7:45-6.1(b) describes the limitations of the type of maintenance or repair work that may be done as authorized under General Permit 1. The facility shall not have been and must not be put to any use other than as specified in any approval authorizing its original construction. The proposed rule also requires that projects authorized under General Permit 1 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. Minor deviations must be shown as necessary to carry out the proposed project and must be consistent with the Master Plan.

N.J.A.C. 7:45-6.2 General Permit 2 – Single Family Residential Additions

Proposed new N.J.A.C. 7:45-6.2 authorizes the construction of additions or appurtenant improvements to single family residential dwellings within the Zone A, provided the residence

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lawfully existed prior to October 10, 1974, when the Park was legislatively created, or was approved by the Commission. An authorization under the general permit can be issued, provided the addition or improvement does not result in cumulative impervious surface of 800 square feet or more for all projects since January 11, 1980. This condition is consistent with proposed N.J.A.C. 7:45-2.3(c)iii, which requires minor projects that will result in more than 800 square feet of impervious surface to be reviewed for stormwater runoff and water quality. The proposed rule also requires that the addition or improvement must be entirely screened from the view of a person in the Park during winter, and any activity under General Permit 2 shall not take place in a Commission regulated stream corridor. During seasons other than winter, leaves may screen the improvement from view; however, leaves do not provide such screening in winter months. A minor project, such as one that would otherwise qualify for General Permit 2, that takes place in the stream corridor must be evaluated for stream corridor impact. Such a review is not consistent with the nature of a general permit, which is to provide expeditious approval of projects that meet specified limits.

N.J.A.C. 7:45-7. Adjudicatory Hearings

Proposed new N.J.A.C. 7:45-7.1 sets forth the rules governing adjudicatory hearings. 7:45-4. Although the language of the rule is different from existing N.J.A.C. 7:45-4, the substance remains the same. A person wishing to contest a decision of the Commission must submit a hearing request no later than 30 days after receiving notice of the decision for which a hearing is requested. The request for a hearing shall stay the operation of the permit, unless the permittee shows good cause why the permit should continue in effect.

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If the Commission grants the request for a hearing, it shall refer the matter to the Office of Administrative Law for an adjudicatory hearing and decision in accordance with the Administrative Procedure Act. If the request for a hearing is denied, the Commission shall notify the requester in writing, including the reasons why the request was denied.

The proposed adjudicatory hearing rule does not provide a right to an adjudicatory hearing beyond what is authorized by law.

N.J.A.C. 7:45-8. Stormwater Runoff and Water Quality Impact Review

Proposed new N.J.A.C. 7:45-8, Stormwater Runoff and Water Quality Impact Review, is the first major update to the Commission's Stormwater Management rules since they were first adopted in 1983. The provisions for stormwater management establish standards for both private and governmental projects within the Commission's jurisdiction.

The proposed new subchapter is modeled on the Department's Stormwater Management rules at N.J.A.C. 7:8, with a notable difference, which is the inclusion of specific design standards for outfalls draining into the Canal (proposed N.J.A.C. 7:45-8.3), proposed to further the goal of protecting and enhancing the water quality of the Canal, a drinking water supply for approximately 1.5 million users (New Jersey Water Supply Authority 2006 Annual Report).

The link between anthropogenic disturbance and changes in aquatic community structure has been consistently documented over the past decade. Land use alterations resulting in an increase in impervious surface, runoff, suspended sediments and pollutant loading directly affect the hydrology, geomorphology, and water quality of streams, rivers, lakes and marine waters,

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and alter the aquatic communities that inhabit these systems. Studies of many New Jersey watersheds suggest that forest and wetlands play a major role in maintaining a healthy supply of water, food, and habitat for intolerant and highly desirable species, and at the same time, mitigate the undesirable affects of other human-induced landscape alterations (Ayers and others, 2000; Chang and others 1999; Kennen, 1999; Kennen and Kurtenbach, in review and available from the Commission). Urban land use, in particular, has been directly linked to a shift in communities to species more tolerant of hydrology, chemical, organic, and habitat changes brought on by increases in chemical use, impervious surface area, surface runoff, and instability of stream habitat. The pressures of urban development on aquatic communities have been and will continue to present many challenges in New Jersey's efforts to meet the goals of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10-1 et seq., and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

The proposed approach to protecting and restoring water resource health focuses on protecting specific environmentally sensitive and critical areas. The proposed rules are intended to prevent the loss and encourage restoration of environmentally critical area stream corridors to moderate the effects of development and provide improved habitat for plants and animals. The proposed rules are also intended to create a closer linkage and integration of land-use planning and regulation with water resource health and the factors that impact it. While the major emphasis of the proposed rules is to improve techniques to minimize runoff, the proposed rules are enhanced to address the Park's need for special measures to protect its environmentally sensitive waters and land areas.

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Proposed Subchapter 8 is anticipated to significantly improve the performance objectives and methods of mitigating the adverse impacts of post-construction stormwater runoff in the Commission's review zone. The proposed new rules require stormwater runoff control techniques that are consistent with the Commission's water resource strategy by:

- Providing a framework and incentives for managing runoff and resolving nonpoint source impairment on a drainage area basis for new and existing development;
- Establishing a hierarchy for measures: first, integrate low impact site design techniques to maintain natural vegetation and drainage, next evaluate if performance standards are met, then incorporate structural best management practices as necessary;
- Establishing new runoff control performance standards for ground water recharge, water quality and water quantity;
- Providing regulatory consistency among regulatory agencies at the local and State level by adopting the same threshold for regulating projects in the Commission's Zone B (0.25 acres of impervious surface or 1.0 acres of disturbance); and
- Providing safety standards for stormwater management basins.

An updated New Jersey Stormwater Best Management Practices (NJ BMP) Manual is available to provide guidance on how to meet the performance standards. The manual is available on the Commission's web page at www.dandrcanal.com, or in hard copy by calling (609) 397-2000.

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The Department has documented the importance of managing stormwater runoff and minimizing nonpoint source pollution through its water quality monitoring and assessment programs. Published results show that approximately 35 percent of the sites were not impaired, while the remainder were moderately or severely impaired. The data are published by the Department's Water Monitoring Management Program at www.state.nj.us/dep/watershedmgt.

The within proposed performance standards are intended to significantly improve runoff management in the drainage review area by recognizing that stormwater is a valuable resource, and that, wherever possible, should be managed by techniques that mimic nature and avoid the concentration of runoff from impervious surface. Traditionally, stormwater management has focused on removing stormwater as quickly as possible to avoid flooding and ponding. Traditional methods of managing runoff often lead to detrimental impacts to groundwater resources, surface water resources, habitat and public and private property. The intent of these proposed rules is to require implementation, where development of land is to occur, of the best currently available methods for preventing hydrologic and water quality impacts of stormwater on streams and other waters including impacts on ecological functions and wildlife. This can be accomplished, first and foremost, by better site design techniques that prevent disturbances through use of nonstructural stormwater strategies or low impact site design to minimize modification to hydrologic conditions.

The proposed design and performance standards are intended to reduce stormwater runoff volume, reduce erosion, and maintain infiltration and groundwater recharge. The design and performance standards require site designs that, to the maximum extent practical, maintain or reproduce as closely as possible natural drainage systems, vegetation and hydrologic response,

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and/or eliminate or minimize the discharge of stormwater-related pollutants. The proposed new groundwater recharge performance standard is intended to protect base flow, stream ecology, and geomorphology while encouraging the preservation and enhancement of environmentally beneficial areas by maintaining or mimicking existing hydrologic conditions. To achieve these goals the proposed rules and the NJ BMP Manual contain an array of stormwater management techniques.

N.J.A.C. 7:45-8.1 Purpose and scope of review

Proposed N.J.A.C. 7:45-8.1, which replaces existing N.J.A.C. 7:45-5.1, sets forth the scope and purpose of the proposed Stormwater Runoff and Water Quality Impact Review rules. The proposed new rule outlines those activities within projects that will require stormwater management review by the Commission.

N.J.A.C. 7:45-8.2 Submission requirements

Like existing N.J.A.C. 7:45-5.2, proposed N.J.A.C. 7:45-8.2 identifies the information that an applicant must submit in order for the Commission to review the stormwater runoff and water quality impacts of a project.

The existing rule at N.J.A.C. 7:45-5.3 requires applicants to demonstrate in their plans that they have taken into account the purpose of the Master Plan and that their projects are based on environmentally sound techniques and incorporate onsite recharge of stormwater where feasible. The proposed rules in Subchapter 8 include detailed and specific requirements for stormwater management and, therefore, the general language of the existing rule is not necessary.

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N.J.A.C. 7:45-8.3 Specific standards for outfalls

Proposed new N.J.A.C. 7:45-8.3 is intended to protect and restore the quality of the water in the Canal. Stormwater carries a pollutant loading; this section prohibits new outfalls or new sources of stormwater that tie into drainage systems discharging to the Canal, thereby minimizing pollutant loading. If a project involves an existing outfall into the Canal, the Commission shall consider remediation measures to reduce pollutant loading. These measures could include removal of the existing outfall, treatment of stormwater from the outfall to achieve 95 percent reduction in total suspended solids (TSS), or treatment of stormwater from offsite.

If an existing outfall into the Canal is necessary to the project, the applicant must demonstrate to the Commission that the outfall is necessary, and that the enumerated remediation measures are not possible. The Commission will then require alternative compensatory measures, as set forth in proposed new N.J.A.C. 7:45-12.6, Waiver of stormwater runoff and water quality.

N.J.A.C. 7:45-8.4 Specific nonstructural stormwater management strategies

As discussed above, the objective in proposing new Subchapter 8 is to prevent or minimize the environmental impacts of stormwater. The environmental impacts of stormwater cannot be effectively prevented or minimized unless solutions are incorporated during the design phase of the development. In the past, many stormwater controls were designed to get runoff as quickly as possible from where the rain fell, into storm drains, basins, and then into a water way. As the amount of developed land has dramatically increased, past practices have often been found to be insufficient to address the impacts of stormwater runoff on erosion, flooding and

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water quality as well as loss of groundwater recharge. In certain cases, past practices have resulted in the exacerbation of the problem they were designed to solve.

The proposed rules emphasize the use of nonstructural strategies to minimize the negative impacts of development on water, land and biota. Proposed new N.J.A.C. 7:45-8.4 (based on N.J.A.C. 7:8-5.3 of the Stormwater Management rules), identifies nonstructural stormwater management strategies intended to reduce stormwater runoff volume, reduce erosion, encourage infiltration and groundwater recharge, maintain or reproduce as closely as possible the natural hydrologic cycle, and minimize the discharge of stormwater-related pollutants (including, but not limited to, total suspended solids and nutrients). These measures, some of which simulate natural drainage features or maintain or reproduce as closely as possible natural hydrologic and vegetative conditions, must be incorporated into the design of major development.

Proposed N.J.A.C. 7:45-8.4(a) requires that the applicant identify the nonstructural strategies incorporated into the design of the project. Nonstructural stormwater management strategies provide the opportunity to address the impacts of stormwater through prevention. Incorporating nonstructural stormwater management strategies can help maintain the qualitative and quantitative characteristics of the site runoff through environmentally sensitive planning and source control. Proposed N.J.A.C. 7:45-8.4(a) further requires that if the applicant contends that it is not feasible for engineering, environmental, or safety reasons to incorporate any nonstructural stormwater management strategies identified in N.J.A.C. 7:45-5.5(b) into the design of a particular project, the applicant must identify the measure and provide a basis for the contention. This requirement will ensure that the use of nonstructural strategies are fully considered in the design of the project.

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Nonstructural stormwater management strategies identified under proposed N.J.A.C. 7:45-8.4(b) are part of proper and environmentally sound site design. Additional guidance for nonstructural stormwater management strategies is available in the NJ BMP Manual. The subsection is identical to N.J.A.C. 7:8-5.3(b) of the Stormwater Management rules.

One nonstructural stormwater management strategy is to protect areas that provide water quality benefits or areas particularly susceptible to erosion and sediment loss (such as near-water course vegetation), as stated in proposed N.J.A.C. 7:45-8.4(b)1. Vegetation is of particular value near waterways, in part because soil eroded near waterways is often readily conveyed to those waterways; vegetation near waterways often provides the final opportunity to filter pollutants in runoff or flood waters. In addition, once vegetation near waterways is disturbed, shoreline and stream bank erosion often increase dramatically. Such vegetation is often difficult to re-establish. Moreover, vegetation near waterways often provides additional water quality benefits by moderating waterway temperatures through shading and by providing food and cover for aquatic biota.

Proposed N.J.A.C. 7:45-8.4(b)2 provides for minimizing impervious surface and breaking up or disconnecting the flow of runoff over impervious surface as another element of proper and environmentally sound site design. Studies and data show a high correlation between degree of development/urbanization and adverse impacts on receiving waters due to stormwater. The minimization and disconnection of impervious surface reduces the volume and peak of runoff, promotes infiltration and groundwater recharge, and preserves base flow, which has a direct correlation to the integrity of stream ecology. In addition, this reduces the volume of stormwater that would need to be treated to achieve water quality objectives at the end-of-pipe.

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An often closely related element of sound stormwater site design, identified in proposed N.J.A.C. 7:45-8.4(b)3, is maximizing the protection of natural drainage features and vegetation. In general, vegetation (if stable) effectively controls erosion of the underlying soil, reduces the volume and velocity of runoff, and to some extent filters pollutants from runoff. In addition, destruction of natural vegetation often destroys mature trees that are an inherently valuable attribute of a site. Once disturbed, natural drainage features often become high-energy conduits for gully erosion, and for moving large amounts of runoff and pollutants directly to waterways.

Another related element in site design for effective stormwater control is minimizing the decrease in the pre-construction time of concentration, under proposed N.J.A.C. 7:45-8.4(b)4. The United States Commission of Agriculture, Natural Resources Conservation Service (NRCS), Technical Release 55 (TR-55), Urban Hydrology for Small Watersheds, defines the “time of concentration” as the time for runoff to travel from the hydraulically most distant point of the watershed to the point of interest within a watershed. (NRCS, 1986). In general, the time of concentration is one of the significant factors affecting stormwater runoff. A reduction in the time of concentration will result in stormwater’s leaving the site faster and in greater quantity, usually resulting in higher peak flows in the receiving water course, which translates to increased flooding and erosion downstream of the site. Accordingly, it is important that any decrease in the time of concentration as a result for development be minimized to control these negative impacts.

Proposed N.J.A.C. 7:45-8.4(b)5 provides another element of proper and environmentally sound site design, which is minimizing land disturbance activities including clearing and grading. Such activities often increase the amount of bare, disturbed soil that is highly

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susceptible to erosion. Soil disturbance can increase soil compaction, and the change in vegetative cover on land that has been graded and cleared can result in an unnecessary increase in stormwater runoff that has to be treated. While there are instances where clearing and grading may be environmentally beneficial, such as stream bank erosion control measures, in general these activities should be minimized. In those instances where environmental benefits exist, the applicant may utilize these methods after justifying their use under N.J.A.C. 7:45-8.4(a).

A nonstructural site design strategy identified under proposed N.J.A.C. 7:45-8.4(b)6 is minimization of soil compaction. Studies have shown the compaction may result in higher than expected runoff volumes from vegetated areas. Poor soil health, which impacts the health of the biota, may also result. Guidance for preventing and alleviating soil compaction is available in the Department of Agriculture's Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90, and in the NJ BMP Manual.

Proposed N.J.A.C. 7:45-8.4(b)7 provides that the site design should provide low-maintenance landscaping that encourages retention and planting of native vegetation and minimizes the use of lawns, fertilizers and pesticides. Landscaping choices can play a significant role in reducing the impacts of stormwater runoff due to development. Generally, trees and shrubs result in lower volumes of runoff than lawn areas and require less application of fertilizers and pesticides. Commonly, lawns receive frequent, substantial applications of fertilizers and pesticides that may have adverse consequences, including transport by runoff to surface waters or by groundwater recharge. Lawns also provide fewer water quality benefits near waterways than native vegetation provides and often use more water from landscape irrigation.

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A nonstructural stormwater management strategy identified under N.J.A.C. 7:45-8.4(b)8 is to provide vegetated open-channel conveyance systems discharging into and through stable vegetated areas. Properly designed vegetated open channel conveyance systems and stormwater runoff discharges into and through vegetated areas provide the opportunity for collected runoff to infiltrate and recharge closer to the location of where the rain fell. In addition, stable vegetation effectively controls erosion of the underlying soil, reduces the volume and velocity of runoff, and, to some extent, filters pollutants in runoff. This measure is closely related to disconnection of impervious surface mentioned above.

Another category of nonstructural stormwater management strategy is site design features for preventive source controls as set forth in proposed N.J.A.C. 7:45-8.4(b)9. Preventive source controls prevent or minimize the use or exposure of pollutants at the site in order to prevent or minimize the release of pollutants into stormwater runoff.

Proposed N.J.A.C. 7:45-8.4(b)9i and ii list as preventive source controls features that help to prevent accumulation of trash or debris in drainage systems, and features to help prevent discharge of trash and debris from the drainage systems into the water way. Trash and debris can add pollutants to flows discharged from drainage systems, and impair the ability of drainage structures to function. Temporary accumulations of trash and debris may be inevitable at locations such as trash racks or stormwater management basins, which trap pollutants and preserve the function of drainage structures. Removing trash and debris is part of the preventive maintenance required under N.J.A.C. 7:45-8.8.

A third type of preventive source control identified in proposed N.J.A.C. 7:45-8.4(b)9iii is to include site design features that help prevent and/or contain spills or other harmful

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accumulations of pollutants at industrial or commercial developments that could be exposed to stormwater runoff. Of particular concern are spills or other harmful accumulations of liquids and solids that are easily soluble in or otherwise readily transported by stormwater. Such liquids and solids may be derived from a variety of sources, including fueling and maintenance of vehicles and other machinery; trash, animal waste, waste motor oil, and other kinds of waste materials; storage or other handling of landscape and garden chemicals (including fertilizers and pesticides) at retail stores; and storage or other handling of raw materials, intermediate products, final products, and by-products at warehouses or manufacturing plants.

Proposed N.J.A.C. 7:45-8.4(b)9iv provides a final example of preventive source control: application of 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, when establishing vegetation after land disturbance. Compliance with those requirements ensures that there are enough nutrients to establish vegetation required for erosion control. Not complying with those requirements may result in unnecessary discharge of nutrients to waters of the State or in the failure to establish vegetation, which could result in soil erosion and discharge of sediment and other pollutants.

In some circumstances (depending on the nature of the development) other preventive source controls may be implemented through elements of site design besides those identified in proposed N.J.A.C. 7:45-8.4(b)9. For example, site design can include trash receptacles and/or covered, watertight and leak proof dumpsters whose use would help to keep pavement clean and prevent accumulations of trash, debris, and pollutants in drainage systems and elsewhere. Site design can also include structures or structural features to contain or facilitate containment of

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spills, or to prevent exposure of vehicle maintenance or material handling areas to stormwater by locating such areas under a roof. A structure or structural feature whose only important function is to contain or facilitate containment of rare or occasional spills rather than to control the quality or quantity of stormwater from most storm events is not a “structural stormwater management measure” for purposes of proposed N.J.A.C. 7:45-8.4. Similarly, although a roof is a structure, it is not a “structural stormwater management measure” for purposes of proposed N.J.A.C. 7:45-8.4 unless it is designed to provide rooftop storage of stormwater runoff.

Proposed N.J.A.C. 7:45-8.4(b)9 is consistent with the goal of moving from end-of-pipe treatment as the primary pollution control strategy to source reduction and pollution prevention as a more cost-effective and environmentally sound regulatory strategy. While pollution prevention may not be appropriate or attainable in all cases, efforts should be made to include pollution prevention site design features in the design of the project. Preventive source practices are especially important for some dissolved or colloidal pollutants that are not substantially removed by the majority of structural controls that are commonly applied to stormwater.

In some circumstances (depending on the nature of the development or project), preventive source controls listed in proposed N.J.A.C. 7:45-8.4(b)9 would be implemented at least in part by implementing a design for post-construction management of the development or project. A wide variety of prohibitions, maintenance procedures, operating procedures, and other management practices can be implemented after developments or projects are built to prevent or remove accumulations of trash and debris in drainage systems; prevent the discharge of trash and debris into water bodies; and prevent, contain, and clean up spills or other harmful accumulations of pollutants. Some examples include prohibitions on improper disposal or discharge of trash,

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animal waste, motor oil, and other kinds of waste materials. Other maintenance practices are pavement sweeping, cleaning procedures that do not flush pollutants into receiving waters, and covering materials of concern at commercial, public, or industrial facilities with tarpaulins. Good housekeeping and preventive maintenance also include filling and material transfer procedures and equipment that minimize spills and prompt use of appropriate spill response equipment, spills occur. Where appropriate, provisions to implement preventive source controls after the development or project is built can be included in ordinances or regulations, permit conditions, deed restrictions, lease agreements, operation and maintenance manuals, or other documents.

Proposed N.J.A.C. 7:45-8.4(c) parallels N.J.A.C. 7:8-8.3(d) of the Stormwater Management rules, which identifies guidance for nonstructural stormwater management strategies that is available to applicants.

N.J.A.C. 7:45-8.5 Specific recharge standards

Proposed N.J.A.C. 7:45-8.5(a) is based on N.J.A.C. 7:8-5.4(a)2, which sets forth the minimum design and performance standards for groundwater recharge in the Department's Stormwater Management rules. Like the Stormwater Management rules, the proposed new rule sets forth minimum design and performance standards for groundwater recharge. Groundwater recharge is the water that infiltrates into the soil, and is not removed by evapotranspiration.

The water that seeps into the soil is infiltration. Part of the water that does infiltrate is returned to the atmosphere through evapotranspiration. Evapotranspiration refers to

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water that is returned to the atmosphere from vegetated areas by evaporation from the soil and plant surfaces (dew and rain) and soil water that is taken up by plant roots and transpired through leaves or needles. Infiltrated water that is not returned to the atmosphere by evapotranspiration moves vertically downward and, upon reaching the saturated zone, becomes groundwater. This groundwater could be in geologic material that is either an aquifer or non-aquifer, depending on whether it can yield satisfactory quantities to wells.

(New Jersey Geological Survey Geological Survey Report GSR-32: A Method for Evaluating Ground Water-Recharge Areas in New Jersey, 1993)

Groundwater feeds the aquifer and base flow to streams and wetlands, which impacts the ecology and geomorphology of the receiving waters. This proposed recharge standard recognizes the importance of groundwater recharge to the health of receiving streams and wetlands.

Proposed N.J.A.C. 7:8-8.5(a)1 provides two options for satisfying the recharge performance standard. The first option is to demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100 percent of the average annual pre-construction groundwater recharge volume for the site. This standard will prevent the loss of pre-construction groundwater recharge from development, which occurs through the use of traditional stormwater management measures that collect and directly discharge stormwater to the water course.

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The second option is to demonstrate through hydrologic and hydraulic analysis that the increase of stormwater runoff volume from pre-construction to post-construction for the two-year storm is infiltrated. The option to infiltrate the increase in the two-year storm will result in the recharge of more water than the first option and will result in maintaining the existing runoff volume for the two-year storm event. This option may provide additional environmental benefits such as compensating for loss of pre-existing groundwater recharge due to existing development in the drainage area, while allowing the design engineer the option of utilizing a standard storm event to meet these criteria.

Proposed N.J.A.C. 7:45-8.5(a)2 describes the conditions under which recharge standards will not have to be met. Specifically, recharge will not be required for redevelopment projects that are subject to stormwater from areas with high pollutant loading and industrial stormwater exposed to source materials that may be a significant source of pollution.

Proposed N.J.A.C. 7:45-8.5(a)3 requires the design engineer to assess the potential hydraulic impacts of recharging groundwater to avoid any measurable adverse impacts.

N.J.A.C. 7:45-8.6 Specific stormwater runoff quantity standards

Proposed N.J.A.C. 7:45-8.6 is based on the Stormwater Management rules at N.J.A.C. 7:8-5.4(a)3, and provides requirements for stormwater runoff quantity control. The proposed standards for stormwater runoff quantity control differ considerably from the existing standard for “flood and erosion control” at N.J.A.C. 7:45-5.2(f)4ii, which requires that “after development the site's peak runoff rate for the two-year storm is 50 percent of the pre-construction peak runoff rate, and the post-construction peak runoff rates for the 10 and 100-year storms are 75 percent

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and 80 percent, respectively, of the pre-construction peak runoff rates.” The existing requirement addresses runoff rates only and does not account for changes to the volume and timing of stormwater. The combination of the discharges from the many sites along a stream result in increased flooding and erosion, due to the increased stormwater runoff volume and the modified timing and duration of the stormwater runoff. Therefore, since increased runoff volume from new developments and projects (and the speed and the duration of this volume as it reaches the water course) is the main source of increased flooding, the requirement of maintaining peak discharge rates (without addressing volume) has proven not to control flooding. In fact, the existing requirement has been shown to increase flooding under certain circumstances. In contrast, the proposed stormwater runoff standards address the increase in stormwater volume from development, as well as the impacts of the timing of the stormwater.

The design engineer can satisfy the standards in proposed N.J.A.C. 7:45-8.6 by choosing one of three options. The first option (N.J.A.C. 7:45-8.6(a)1) is to demonstrate 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. In other words, it must be demonstrated that for each of the storm events, the post-construction runoff rate of stormwater leaving the site at each point in time after the onset of the storm event does not exceed the pre-construction runoff rate at the same point in time. This demonstration ensures that there will be no increased rate or volume of stormwater runoff and also ensures that there will be no change in timing of stormwater runoff that could increase flood damages. This option can be feasible in highly urban areas where the total impervious surface of the site will remain the same or be reduced from the pre-to post-construction conditions, or

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where site conditions are and will remain particularly favorable for stormwater infiltration and groundwater recharge. If this option is not feasible, one of the other two remaining options can be used to meet the requirement.

The second option at proposed N.J.A.C. 7:45-8.6(a)2 is to demonstrate that there is no increase, as a result of the development, 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 damages (including damage to natural systems as well as man-made features or human activities) at or downstream of the site. Under this option, the analysis must address impacts of existing land uses and projected land uses assuming full development under existing zoning. If this demonstration is not feasible, the design engineer should consider the third option instead.

The third option, at proposed N.J.A.C. 7:45-8.6(a)3, is to 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. This is the same standard as in the existing Commission rules at N.J.A.C. 7:45-5.2(f)4ii.

Proposed N.J.A.C. 7:45-8.6(b) also includes language that makes it clear that 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. This practice is consistent with the way that the Commission interprets the existing rules regarding reduction in peak discharges.

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N.J.A.C. 7:45-8.7 Specific water quality standards

Proposed N.J.A.C. 7:45-8.7 sets forth minimum design and performance standards to address post-construction stormwater runoff quality impacts of major development. “Post-construction” means that construction has been completed and the site has been properly stabilized using permanent vegetative and/or structural erosion and sediment control practices. Whereas the standard for water quality control in existing N.J.A.C. 7:45-5.4 is expressed in terms of retention periods for, or infiltration of, the water quality design storm, proposed N.J.A.C. 7:45-8.7 consists of standards for control of total suspended solids (TSS) generated from the water quality design storm. There are practices and mechanisms (filtration, for example) besides retention and infiltration that substantially reduce pollutants in stormwater runoff. Proposed N.J.A.C. 7:45-8.7 is based on a reduction of the total annual load, and does not apply to TSS loads generated from any storms greater than the water quality design storm.

Under proposed N.J.A.C. 7:45-8.7(a), stormwater management measures shall be designed to reduce the post-construction load of TSS from the water quality design storm, by 80 percent, expressed as an annual average. The 80 percent TSS reduction standard in N.J.A.C. 7:45-8.7(a) replaces the narrative of TSS reduction standards in existing N.J.A.C. 7:45-5.4. Because extended detention basins are credited with a maximum 60 percent TSS removal rate (see Table 2 at proposed subsection (c) discussed below), the use of an extended detention basin alone to remove TSS will not be sufficient to meet the 80 percent TSS reduction standard. Infiltration basins and wet ponds can continue to be used as a stand-alone BMP. Additional BMPs that are not currently recognized to meet existing water quality requirements have been

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included as options to address the water quality performance standard for reduction of post-construction TSS by 80 percent and reduction of nutrients to the maximum extent practicable.

TSS reduction efficiency fluctuates. Stormwater management measures that are designed to reduce TSS loads generated from the water quality design storm by 80 percent expressed as an annual average are not necessarily designed to reduce TSS loads by 80 percent for every individual storm event. In addition, site removal rates may vary depending upon the total loading of the TSS, and other site factors.

The TSS reduction standard in proposed N.J.A.C. 7:45-8.7(a) does not apply to any land that will deliberately be retained in a continuously or frequently disturbed condition after construction has ceased (for example, land in mining developments). TSS from such land will instead be controlled by applying the minimum standards for erosion control.

The 80 percent TSS reduction standard in proposed N.J.A.C. 7:45-8.7(a) is consistent with the 80 percent reduction value for average annual TSS loadings that is part of “New Development Management Measures” for urban runoff contained in the “Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters” published by the United States Environmental Protection Agency (USEPA) pursuant to Section 6217(g) of the Coastal Zone Management Act Reauthorization Amendments of 1990, 16 U.S.C. § 1455b(g). In response to this program, New Jersey developed a coastal nonpoint source management program that includes implementation of management measures over a large majority of the State. Federal guidance indicates that USEPA selected the 80 percent reduction value based on the following factors:

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1. Removal of 80 percent of TSS is assumed to control heavy metals, phosphorus, and other TSS-associated pollutants (and to control TSS itself);

2. A number of coastal states, including Delaware and Florida, require and have implemented a TSS removal treatment standard of at least 80 percent for new development; and

3. Analysis has shown that constructed wetlands, wet ponds, and groundwater recharge basins can remove 80 percent of TSS, provided they are designed and maintained properly.

Other practices or combinations of practices can be also used to achieve the goal.

The water quality design storm specified in proposed N.J.A.C. 7:45-8.7(a) for TSS and nutrients is 1.25 inches of rainfall falling in two hours. This is the same as existing N.J.A.C. 7:45-5.4(c).

The distribution of the water quality design storm reflected in Table 1 of proposed N.J.A.C. 7:45-8.7(a) is different than the water quality storm in N.J.A.C. 7:45-5.4(c), which defines the water quality storm as 1.25 inches falling uniformly in two hours. The distribution of the Water Quality Design Storm in the existing rules is based upon a constant or uniform rate of rain over its two-hour duration. Since its development, the Water Quality Design Storm has provided a sound basis for the design of stormwater quality treatment facilities that require an estimate of the total runoff volume that will flow to the facility. Due to its uniform rainfall rate assumption, the Water Quality Design Storm has more limited application in the design of facilities that also require an accurate estimate of the peak rate of runoff that will flow to it. However, until recently, the design of the most commonly used treatment facilities did not require a peak runoff rate estimate.

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Recent developments in the field of stormwater quality management have led to an increase in the number of treatment facilities that require an accurate estimate of the peak rate of incoming runoff. For this reason, the Water Quality Design Storm reflected in the existing rules is proposed to be modified by changing its uniform or linear rainfall distribution to a non-uniform one. The proposed non-uniform rainfall distribution will enable the Water Quality Design Storm to provide estimates of both total runoff volume and peak runoff rate for the same frequency storm event. In other words, the same frequency storm that is being addressed by the volume device under the present Water Quality Design Storm will be the same frequency storm that is addressed for both volume and flow devices under the new Water Quality Design Storm distribution. The rainfall distribution in Table 1 was developed by changing the uniform intensity in the present two-hour storm event to a variable one. The new variable intensity distribution was achieved by utilizing rainfall intensities for various durations, up to two hours, that have the same frequency as the overall storm event of 1.25 inches in two hours. The variable intensities were distributed symmetrically over the two hours, with each centered about the middle of the storm. Table 1 at proposed N.J.A.C. 7:45-8.7 is the same as Table one at N.J.A.C. 7:8-5.5(a) of the Department's Stormwater Management rules.

The majority of BMPs are sized based on the volume of runoff. However, certain BMPs (such as specific manufactured treatment devices) base the sizing of the BMP on peak flows, and using the 1.25 inches falling uniformly in two hours is less protective for peak than for volume. Therefore, a modification of the rainfall distribution is proposed.

Proposed N.J.A.C. 7:45-8.7(b), which is based on N.J.A.C. 7:8-5.5(b) of the Department's Stormwater Management rules, identifies presumed removal rates from certain

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BMPs designed in accordance with the NJ BMP Manual as shown in Table 2, which is the same as Table 2 at N.J.A.C. 7:8-5.5. The removal rates shown in Table 2 represent appropriate removal rates for each BMP, based on literature values and the best professional judgment of the BMP Technical Committee. TSS reductions shall be calculated based on the removal rates in Table 2. It shall be assumed that if any of the stormwater management measures identified in Table 2 of N.J.A.C. 7:45-8.7(c) are sited, designed, constructed and maintained to the standards listed in the NJ BMP Manual, that measure will achieve the removal rates cited in Table 2. However, the design engineer has the opportunity to demonstrate that a BMP would achieve removal rates other than those listed in Table 2, or that different methods will satisfy the required removal rate.

The stormwater management measures shown in Table 2 do not all achieve the targeted 80 percent TSS removal from post-construction loading, and it may be necessary to place two BMPs in series to achieve the target rate. Proposed N.J.A.C. 7:45-8.7(c) gives the formula determining the total removal rate for two BMPs in series, which is the maximum required to achieve 80 percent TSS based on the TSS Removal Rates listed in Table 2. The equation for the total removal rate (R) for two BMPs in series is $R = A + B - (A \times B) / 100$, as shown in proposed N.J.A.C. 7:45-8.7(c), which is the same as N.J.A.C. 7:8-5.5(c).

The formula for the total removal rate is derived as follows. If more than one BMP is needed, then the removal rate of the secondary BMP should be applied to the fraction of the pollutant remaining after the runoff has passed through the first BMP. An example is provided below:

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The first BMP is an extended detention basin with a TSS removal rate of A or 60 percent (0.60). The second BMP is a vegetative filter strip with a TSS removal rate of B or 50 percent (0.50). First apply the first removal rate (A) to achieve the TSS load remaining after the first BMP.

$$1.0 \text{ TSS} \times 0.60 \text{ TSS removal rate} = 0.60 \text{ TSS removed by 1st BMP or}$$

$$1.0 \text{ TSS} \times A \text{ TSS removal rate} = A \text{ TSS removed by 1st BMP}$$

$$1.0 \text{ TSS} - 0.60 \text{ TSS removed} = 0.40 \text{ TSS after 1st BMP or}$$

$$1.0 \text{ TSS} - A \text{ TSS removed} = (1.0 - A) \text{ TSS}$$

after 1st BMP

Then apply the second removal rate on the TSS load remaining after the treatment of the first BMP.

$$0.4 \text{ TSS after 1st BMP} \times 0.50 \text{ TSS removal rate} = 0.20 \text{ TSS removed by 2nd BMP or}$$

$$(1.0 - A) \text{ TSS load after 1st BMP} \times B \text{ TSS removal rate} = (1.0 - A) \times B \text{ TSS removed by 2nd BMP}$$

To calculate total removal rates, add the amount removed by the first BMP to the amount removed by the second BMP.

$$\text{Total TSS Removal} = 0.60 \text{ TSS removed by 1st BMP} + 0.20 \text{ TSS removed by 2nd BMP}$$

or

$$\text{Total TSS Removal} = A \text{ TSS removed by 1st BMP} + (1.0 - A) \times B \text{ TSS removed by 2nd BMP}$$

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The equation simplifies to Total TSS Removal $R = A + B - (A \times B)$. In order to use the percentage of removal rates instead of the decimal values of the removal rates, the equation is adjusted to $R = A + B - (A \times B)/100$, as shown in proposed N.J.A.C. 7:45-8.7(c).

Proposed N.J.A.C. 7:45-8.7(d), which is the same as N.J.A.C. 7:8-5.5(d) of the Department's Stormwater Management rules, specifies how TSS reduction is to be calculated if there is more than one onsite drainage area. In that case, the 80 percent TSS removal rate applies to each drainage area on site unless the subareas converge onsite. Where the subareas converge onsite, the removal rate can be demonstrated through a calculation using a weighted average. This allows the design engineer to use composite average annual removal rates provided that it results in the required water quality performance for the site.

Proposed N.J.A.C. 7:45-8.7(e) advises that additional information and samples are available in the NJ BMP Manual, available at www.dandrcanal.com.

N.J.A.C. 7:45-8.8 Specific stormwater management maintenance requirements

Proposed N.J.A.C. 7:45-8.8 sets forth maintenance requirements for stormwater management measures and replaces maintenance requirements in existing N.J.A.C. 7:45-5.4(i).

Proposed N.J.A.C. 7:45-8.8(a) requires a conservation and maintenance easement to ensure continued performance of obligations required of the owner of the property be completed and executed. This requirement is the same as that in existing rule N.J.A.C. 7:45-5.4(i). The Commission may require that the easement contain a maintenance plan to ensure that the stormwater management measures fulfill their intended groundwater recharge, stormwater runoff

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quality and quantity control functions; to prevent or minimize any threat to public health or safety; and to minimize long-term maintenance costs.

The proposed rule requires maintenance plans to contain cost estimates and specific preventive maintenance tasks and schedules. The maintenance plan must also identify the person or persons responsible for preventive and corrective maintenance. If the maintenance plan identifies a person other than the developer as having responsibility for the maintenance, the plan shall include documentation of the person's agreement to assume this responsibility or the developer's obligation to dedicate the stormwater management facility to such person under an applicable ordinance or regulation. In some cases, a person is listed for the maintenance responsibility of a stormwater management facility without being aware of their charge and the tasks associated with maintaining the facility. The documentation of the person's agreement or obligation to be the responsible party is intended to notify the responsible party of the tasks that they will be assuming as part of the maintenance for the stormwater management facility.

Proposed N.J.A.C. 7:45-8.8(b) provides that the maintenance responsibility shall not be assigned or transferred to owners or tenants of an individual property owner unless they are responsible for the entire residential development or project. As noted in the Department's Stormwater Management Facilities Maintenance Manual, "it is unlikely that an individual homeowner will have the capability or resources to properly maintain a Stormwater Management Facility."

Proposed N.J.A.C. 7:45-8.8(c) requires corrective maintenance to be performed as needed and identifies several examples of such maintenance. Proposed N.J.A.C. 7:45-8.8(c) requires that the person responsible for maintenance maintain a log of the maintenance activities.

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Proposed N.J.A.C. 7:45-8.8(d) provides that the person responsible for maintenance evaluate the effectiveness of the maintenance plan at least once per year and adjust the maintenance plan as needed.

Proposed N.J.A.C. 7:45-8.8(e) requires that the conservation restriction, or measure ensuring stormwater management, is maintained in perpetuity.

Proposed N.J.A.C. 7:45-8.8(f) provides that nothing in this section shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53. The maintenance provisions in proposed N.J.A.C. 7:45-8.8 do not supersede the authority of the municipality to require performance or maintenance guarantee.

The need for a maintenance plan, and implementation of that plan, cannot be overemphasized, since the lack of maintenance is one of the major reasons for the failure of structural BMP's to provide the level of treatment for which they were designed. Basic maintenance procedures are contained in the NJ BMP Manual. Unique or innovative maintenance procedures for those measures that are not specified in the NJ BMP Manual may be used subject to approval by the review agency.

N.J.A.C. 7:45-9. Stream Corridor Impact

The protection and restoration of the quality of the water entering the Park is one of the three primary goals of the Commission.

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The following is a summary of recent studies conducted by the US Geological Survey in cooperation with the New Jersey Water Supply Authority, the agency responsible for the management of the Canal as a water supply:

Water purveyors that use water from the Delaware and Raritan Canal have noted increased suspended solids during storm events, requiring the use of additional chemicals for removal. The Middlesex Water Company collects samples along the Canal from Port Mercer to Landing Lane and has noticed two spikes in suspended solids concentrations after storm events, related to the travel time of stormwater runoff once in the Canal. In addition to water from the Delaware River, the Canal receives drainage from 84 square miles, 60 square miles from influent tributaries with the remainder from natural channels and storm sewers. From January 1998 through May 1999, the USGS conducted water quality monitoring of the Delaware and Raritan Canal, specifically to assess the impact of stormwater runoff on water quality. The study consisted of instantaneous grab sampling as well as continuous water quality monitoring at seven and eight locations respectively.

Turbidity is used as a surrogate measurement for total suspended solids. The New Jersey surface water quality standard for turbidity is a maximum 30-day average of 15 NTU (nephelometric turbidity units) and a maximum of 50 NTU at any time. Based on the continuous water quality monitoring by the USGS, the Canal does not meet the 30-day average criterion between 12 and 43 percent of the time, depending upon location. During the sampling period, all but one location monitored on the Canal had violations of the 50 NTU one-sample maximum standard (using daily values calculated from the

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continuous monitoring data). Between 10 and 34 violations of the one-sample maximum criterion occurred at each location for monitoring periods that ranged from 330 and 453 days.

Grab samples were analyzed for nitrogen species (nitrite, nitrite plus nitrate, ammonia, and ammonia plus organic nitrogen in filtered samples, and ammonia plus organic nitrogen in whole water samples), phosphorous in filtered and unfiltered samples, total suspended solids, suspended organic carbon, dissolved organic carbon, UV 254nm, and 29 Volatile Organic Compounds (VOCs). Turbidity, specific conductance, and temperature were measured continuously. Data indicated that concentrations of phosphorus, ammonia plus organic nitrogen, and turbidity were higher during storm conditions. Water quality along the Canal did not vary significantly by location, except for suspended organic carbon. Suspended organic carbon concentrations were largest in the feeder section of the Canal. The USGS also tested samples for 29 volatile organic compounds (VOCs). Only 6 of the 29 compounds were detected and none of a concentration that exceeded USEPA or New Jersey Primary Drinking Water Maximum Contaminant Levels. Samples collected by the NJDEP at Griggstown between August 2005 through May 2007 indicate that total phosphorus has exceeded the surface water quality standard of 0.1 mg/l. Samples collected during the USGS study also had concentrations of total phosphorus greater than 0.1 mg/l. Elevated phosphorus concentrations can contribute to extensive algal blooms and excessive aquatic plant growth. The resulting algae and plant growth contribute organic carbon to the water. Organic carbon can be problematic for water purveyors because it is a precursor to the

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formation of disinfection by-products, which are carcinogenic, and is not completely removed during the treatment process.

While the USGS study (Water Resources Investigations Report 01-4072) found 12 infalls to the Canal none are known to contain point sources of treated or untreated effluent to the Canal – the problem is caused entirely by nonpoint source pollution. The water supply intakes for the New Brunswick and Middlesex Water Company are near the end of the Canal, and are directly impacted by the nonpoint pollutant loads. (Personal Communication, NJ Water Supply Authority)

The NJ Water Supply Authority conducted a follow-up study, the Delaware and Raritan Canal Tributary Assessment and Nonpoint Source Management Project – Watershed Restoration and Protection Plan Final Report. This report focused on the last 11 miles of the Canal located in both the Millstone and Lower Raritan Watersheds. The NJ Water Supply Authority conducted field inspections that identified a total of 98 infalls in this portion of the Canal. Drainage areas and land uses were identified for the infalls and then modeling was conducted to estimate potential pollutant loading. The infalls were then ranked in order of potential contribution. Best management practices for non-point source pollution control are currently being designed and will eventually be constructed to reduce these sources of pollution.

In order to address the issues discussed above and to accomplish goals outlined in the Commission’s statutory authority and further developed in the Delaware and Raritan Canal State Park Master Plan (last revised May 1989), the proposed rules contain further enhancements to the regulations protecting stream corridors that were first adopted in February 1990. The protection of stream corridors is a widely accepted “best management practice” that

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accomplishes a number of goals, including improving and maintaining water quality, reducing flooding impacts, reducing stream temperatures, reducing bank scouring and resulting silt loads, as well as providing wildlife habitat and travel corridors.

The existing rules at N.J.A.C. 7:45-1.2 define a “stream corridor” as including a stream and any of its tributaries from the point that it feeds into the Park upstream to the point that it drains less than 50 acres. Existing N.J.A.C. 7:45-6.1 lists 18 streams that drain into the Park. The proposed new definition of “stream corridor” at N.J.A.C. 7:45-1.3 would modify the existing definition to include any water course that flows into the Park or the Canal and its tributaries upstream to the point that they drain less than 50 acres. This change will result in the designation of One Mile Run, Cedar Grove Brook, Gold Run, and several other unnamed water courses that drain into the Park as “stream corridors.”

The proposed definition of “stream corridor” at N.J.A.C. 7:45-1.3, and proposed new N.J.A.C. 7:45-9 divide stream corridors into two categories: those water courses that drain into the Canal and those that drain into the Park, but not into the Canal. The Commission is proposing different sets of standards for each category. The standards for stream corridors draining into the Park, but not the Canal, are unchanged from the existing rules. However, for those water courses that drain into the Canal, the proposed definition of “stream corridor” at N.J.A.C. 7:45-1.3 includes a minimum corridor limit of 300 feet from the top of the water course’s bank.

The purpose of this more stringent standard is to establish an adequate buffer to prevent point discharges and minimize non-point discharges of stormwater to the water course, thereby preserving and enhancing the water quality of the Canal. The Canal is part of the Raritan System

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operated by the New Jersey Water Supply Authority. According to the Authority's 2006 Annual Report, the Raritan System provides water to approximately 1.5 million users. The increased stream corridor protection will supplement the existing regulatory protection, whereby a stream corridor's limits consist of the 100-year floodplain plus a 100-foot buffer on either side of the floodplain. In the majority of cases, this existing standard for the limits of the Stream Corridor will exceed the proposed 300-foot minimum. However, for the headwaters of those water courses where the associated floodplains are confined to their streambeds and banks, the inclusion of a 300-foot minimum will give greater protection.

In accordance with the goals and objectives of the Department's Water Quality Standards, the Canal would qualify as a Category One waterway. This is based on the fact that it is a critical water supply, providing raw source water to drinking water purveyors that serve approximately 1.5 million users. The above-outlined approach to water quality protection is proposed in lieu of designating the Canal a Category One waterway, due to its unique nature as a manmade structure. The Canal is comprised of structures that include berms, culverts, and aqueducts; these structures prevent many of the water courses that drain toward the Canal and into the Park to drain directly into the Canal. Thus, there is significant land acreage adjacent to the Canal that does not drain directly into it. Therefore, applying a blanket 300-foot buffer to the entire 60-mile length of the Canal, in accordance with the Department's Stormwater regulations for Category One waterways, would not achieve the goal of water quality restoration and protection for those areas that do not drain into the Canal, and would impose an unnecessary regulatory burden.

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In sum, the proposed rules continue the existing standards for stream corridors, with the addition of proposing a minimum 300-foot buffer as a Best Management Practice for protecting the integrity of those streams that drain into the Canal, for the purpose of maintaining and enhancing the physical, biological and chemical corridor of those streams. The proposed rules also continue the waiver provision of the existing Stream Corridor Impact regulations at N.J.A.C. 7:45-6, with the recognition that local conditions may justify consideration of a different buffer. An averaging plan that is proposed for a particular potential development site will be considered by the Commission provided it is demonstrated to the Commission that the functional value and overall condition of the stream corridor buffer is maintained or enhanced, there are no intrusions into the floodplain, and a minimum buffer of 150 feet is maintained for those streams that drain directly into the Canal. See N.J.A.C. 7:45-12.4(a)2.

N.J.A.C. 7:45-9.1 Scope of review

If a project includes any portion of a stream corridor of any water course as defined at proposed N.J.A.C. 7:45-1.3, then proposed N.J.A.C. 7:45-9.1 makes the project subject to Commission review for stream corridor impact.

N.J.A.C. 7:45-9.2 Submission requirements

In addition to those items that the existing rules at N.J.A.C. 7:45-6.2 require an applicant to submit as part of the review of stream corridor impact, proposed new N.J.A.C. 7:45-9.2(a) requires a description of existing vegetation in the stream corridor, and a computer-generated file in order to facilitate tracking of conservation easements that are required for projects containing stream corridors. Also, the scale of the map of the project site is proposed to be expanded from one inch equals 200 feet, to one inch equals 100 feet. Under the proposed new rules, the 100-

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year flood line, required at existing N.J.A.C. 7:45-6.3(a)1, must be verified by the Department's Division of Land Use Regulation. Since there are several ways an applicant can establish the 100-year flood line (FEMA maps, State study maps or individual engineering studies) the Commission relies on the Department's verification of the flood line to determine the stream corridor's limits. Verifying the flood line with the Department is a step that applicants take when working in or adjacent to the floodplain, regardless of the Commission's involvement.

N.J.A.C. 7:45-9.3 Prohibited uses within stream corridors

In addition to those prohibited uses at existing N.J.A.C. 7:45-6.3(a), proposed N.J.A.C. 7:45-9.3 adds two prohibited uses. Proposed N.J.A.C. 7:45-9.3(a)9 prohibits the planting of non-native vegetation within the corridor. This prohibition will help curb the invasion of non-native species within New Jersey's landscapes and help preserve biodiversity. Proposed N.J.A.C. 7:45-9.3(a)10 prohibits new outfalls within stream corridors of streams that discharge into the Canal. This prohibition is part of the proposed best management practices, maintaining and restoring the water quality of the Canal. This topic is more fully addressed in the Summary of Subchapter 8, Stormwater Management, above.

Proposed new N.J.A.C. 7:45-9.3(b) requires a minimum of 25 feet of usable yard between the stream corridor and dwellings, as does existing N.J.A.C. 7:45-6.3(b). The substance of the new and existing rules is the same.

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N.J.A.C. 7:45-9.4 Conditional uses within stream corridors

Proposed N.J.A.C. 7:45-9.4 contains two subsections. Proposed subsection (a) contains conditional uses within stream corridors of water courses that drain into the Park, and proposed (b) contains a more limited list of conditional uses for those stream corridors of water courses that drain into the Canal itself.

Proposed N.J.A.C. 7:45-9.4(a)1 through 3 are the same conditional uses as are in existing N.J.A.C. 7:45-6.4(a)1 through 3, which are recreational paths; outlet installation for sewage treatment plants and sewage pumping stations and the expansion of existing sewage treatment facilities; and private or public water supply wells that have a sanitary seal. Proposed N.J.A.C. 7:45-9.4(a)5 and 6 allow sanitary storm sewers, and outfall structures associated with storm water management facilities, which are permitted conditional uses at existing N.J.A.C. 7:45-6.4(a)6 and 7. Underground utility transmission lines, installed under specific circumstances, at proposed N.J.A.C. 7:45-9.4(a)7, are in the existing rules at N.J.A.C. 7:45-6.4(a)8.

Existing N.J.A.C. 7:45-6.4(a)4 conditionally allowed quarrying, excavating, digging, and dredging to improve hydraulics or to protect public health. These uses are not conditional uses under the proposed rules. There are obvious environmental impacts from such activities in the stream corridor and, if warranted, the activities could be allowed by the granting of a waiver based on public health and safety, as described at proposed N.J.A.C. 7:45-12.3

Proposed N.J.A.C. 7:45-9.4(a)4 modifies existing N.J.A.C. 7:45-6.4(a)5 by eliminating the construction of dams as a conditional use within a stream corridor, because of their potential for environmental degradation, including the elevation of water temperatures, increased siltation, and the blockage of fish passage. The new rule continues the conditional uses at N.J.A.C. 7:45-

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6.4a)5 of the installation of culverts, pipelines, bridges and roads that cross the corridor as directly as possible. Proposed N.J.A.C. 7:45-9.4(a)8 is also new, and provides relief to applicants proposing to build a single family home on a single lot less than one acre and in existence since January 1989 (the first date of adoption of stream corridor provisions of these regulations).

Proposed N.J.A.C. 7:45-9.4(b) outlines those uses that are conditionally permitted in the stream corridors of water courses or their tributaries that drain into the Canal. These uses include recreational paths, flow or water quality measuring devices, as well as utilities, bridges and roads that cross the corridor as directly as possible and are designed not to impede fish passage.

N.J.A.C. 7:45-9.5 Preservation of stream corridor

Proposed N.J.A.C. 7:45-9.5 is the same as existing N.J.A.C. 7:45-6.5, and requires an applicant to take whatever measures are necessary to ensure that areas designated as stream corridors are preserved, and to prevent additional encroachments into the stream corridor as a result of the granted approval.

N.J.A.C. 7:45-9.6 Local stream corridor ordinance

Proposed N.J.A.C. 7:45-9.6 is similar to existing N.J.A.C. 7:45-6.6, and provides that a local stream corridor ordinance will apply instead of the Commission's rules, if that ordinance is more stringent. The proposed rule requires that an applicant shall grant to the Commission an easement or conservation restriction. Thus, should the local ordinance change, the stream corridor's preservation will be ensured.

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N.J.A.C. 7:45-10. Visual, Historic and Natural Quality Impact

Proposed Subchapter 10 corresponds to existing Subchapter 7, with modifications. The proposed heading of the new subchapter is “Visual, Historic and Natural Quality Impact,” to reflect the proposed purpose of the rule, as set forth at N.J.A.C. 7:45-1.1, Purpose. The proposed new purpose includes recognition of the historic aspects of the Park.

N.J.A.C. 7:45-10.1 Submission requirements

Proposed new N.J.A.C. 7:45-10.1 is similar to existing N.J.A.C. 7:45-7.1, with the addition of the word “historic,” to be consistent with the proposed subchapter heading and the stated purpose of the proposed rules, as discussed above. The section enumerates the items that must be submitted to the Commission for a review of the visual, historic, and natural quality impacts of projects. In addition to submission requirements listed at existing N.J.A.C. 7:45-1.1, proposed N.J.A.C. 7:45-10.1 adds two requirements: a survey of the property and, for private projects within the Park, a copy of a lease agreement application to the New Jersey Water Supply Authority.

N.J.A.C. 7:45-10.2 General standards of review for visual, historic and natural quality impact

Proposed N.J.A.C. 7:45-10.2 is the same as existing N.J.A.C. 7:45-7.2, with the addition of the word “historic.” It sets forth the standards by which the Commission shall review projects in Zone A.

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N.J.A.C. 7:45-10.3 Review of visual, historic and natural quality impact of projects within Zone A

Proposed N.J.A.C. 7:45-10.3 is based upon existing N.J.A.C. 7:45-7.3. As in the rest of Subchapter 10, the word “historic” is proposed to be added to the heading. Proposed N.J.A.C. 7:45-10.3(a) is the same as existing subsection 7.3(a). Proposed new subsection 10.3(b) states that special compensatory measures may be required for minor projects located in Natural, Rural, Transportation, and Special Node Environments to mitigate a project’s potential for harmful impact.

Under both the existing and proposed rules, the Commission discourages major projects within Zone A. If a major project is proposed, the Commission requires special compensatory measures as mitigation. Although a minor project in Zone A will have a less harmful impact than a major project, there are cases where a minor project can create significant adverse visual, historic or natural impacts on the Park. If the impact cannot be lessened by re-design in these circumstances, this provision allows the Commission to require specific compensatory measures as mitigation for that impact.

Existing N.J.A.C. 7:45-7.3(b), a description of the geographic limits of Zone A, is eliminated, because these limits are included in the definition for “Review Zone” at proposed N.J.A.C. 7:45-1.3.

N.J.A.C. 7:45-10.4 Design standards for review of visual, historic and natural quality impact

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Proposed N.J.A.C. 7:45-10.4 is based on existing N.J.A.C. 7:45-7.4. As in the rest of the subchapter, the word “historic” is proposed to be added. Proposed (a) is the same as existing N.J.A.C. 7:45-7.4(a), except “Canal Park” in the existing rule is “Park” in the proposed rule. This more accurately reflects the definitions at proposed N.J.A.C. 7:45-1.3.

Existing N.J.A.C. 7:45-7.4(b) states that for all environments other than urban environments, structures shall not be visible above existing tree canopy as viewed from the Park. Where such canopy does not exist, or consists of immature vegetation, structures shall be limited to a height of 40 feet above existing grade. Proposed N.J.A.C. 7:45-10.4(b) eliminates the requirement that structures in these environments must not be visible above the existing tree canopy as viewed from the Park. Based on past reviews of applications for projects near the Park, the Commission has found that designing a project not to be visible above the existing tree canopy does not guarantee that the height of a structure will not have a harmful visual impact on the Park. Therefore, for minor and major projects in Zone A in environments other than urban environments, structures shall be limited to a height of 40 feet above existing grade where existing vegetation does not provide adequate winter screening. Regardless of the existence or maturity of tree canopy, the purpose of this provision is to require adequate winter screening for any structures proposed in Zone A.

Existing N.J.A.C. 7:45-7.4(c) states that for major projects in Zone A, the exterior appearances of a project shall be in keeping with the character of the Park’s individual environments. The existing rule lists and describes standards that shall apply to the design of the exterior appearance of major projects in Zone A. The proposed rule at N.J.A.C. 7:45-10.4(c) requires the same, but also requires minor projects in Zone A to conform to the same standards

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as described at N.J.A.C. 7:45-10.4(c)1 and 2. The Commission has determined that the potential for adverse visual impact applies to minor projects as well as major projects. Consequently, minor projects should also conform to design standards that have already been established for major projects in Zone A.

Proposed N.J.A.C. 7:45-10.4(d) is similar to existing N.J.A.C. 7:45-7.4(d). This provision describes standards that an applicant must comply with for various types of projects, such as electric lines, outbuildings, parking lots, and commercial signs. Of the standards listed at existing N.J.A.C. 7:45-7.4(d), only standards for signs are proposed to be changed. The proposed rule at N.J.A.C. 7:45-10.4(d)3 prohibits all commercial signs or outdoor advertising structures in excess of eighty square feet surface area that would be visible from the Park. This provision is proposed in order to further protect the Park from adverse visual impacts that may occur from the installation of billboards or other large commercial signs that are not in keeping with the historic context of the Park.

Existing N.J.A.C. 7:45-7.4(d)3iv requires that a free standing sign or other advertising device or part thereof visible from the Park shall be no more than 200 feet above ground level. The proposed standards at N.J.A.C. 7:45-10.4(d)3iv and v limit the height to 100 feet for urban environments, and 40 feet for suburban and transportation environments. The proposed rules will further ensure that the historic and scenic qualities of the Park will not be harmfully impacted by towering signage.

Existing N.J.A.C. 7:45-7.4(d)5 requires projects located in any officially designated Federal, State or local historic district or site to be compatible in scale, height, materials and site planning with existing structures in that site or district. The corresponding provision at proposed

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N.J.A.C. 7:45-10.4(d)6 augments this rule by requiring that review of historic structures will be based upon the Secretary of the Interior's "Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings," which is available at <http://www.nps.gov/history/hps/tps/standguide/>. This provision is based on N.J.A.C. 7:4, the New Jersey Register of Historic Places Rules. The provision is proposed in order to further define and clarify standards regarding scale, height, materials and site planning with existing structures in historic districts.

N.J.A.C. 7:45-11. Traffic Impact

N.J.A.C. 7:45-11.1 Review of major projects for traffic impact

Proposed N.J.A.C. 7:45-11.1 is the same as existing N.J.A.C. 7:45-8.1, and requires that the Commission review certain major projects for their impact on traffic. Depending on the results of the review, the applicant may be required to institute planning techniques to direct traffic away from the Park.

N.J.A.C. 7:45-11.2 Review of road construction, road improvements, and new traffic loads

N.J.A.C. 7:45-11.2 is the same as existing N.J.A.C. 7:45-8.2, and provides the conditions under which the Commission will approve projects that involve new vehicular crossings of the Canal, or for projects involving new or improved roads in the Review Zone within one mile of any portion of the Park.

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N.J.A.C. 7:45-12. Waiver of Strict Adherence to Review Standards

Proposed new Subchapter 12 is based on existing N.J.A.C. 7:45-9, Waiver of Review of Governmental and Private Projects. The proposed new heading, “Waiver of Strict Adherence to Review Standards,” indicates that only review procedures or specific requirements of a review may be waived. Full review of a project will not be waived, as was possible under the existing rules, except for those projects that qualify for a full waiver due to natural disasters, as specified at N.J.A.C. 12.8.

N.J.A.C. 7:45-12.1 Purpose

Proposed N.J.A.C. 7:45-12.1 sets forth the purpose of the subchapter, which is to establish procedures and standards under which the Commission may waive strict adherence to one or more of the review standards in N.J.A.C. 7:45. As in the purpose expressed in existing N.J.A.C. 7:45-9.1, the intention of the waiver is to provide relief, when strict compliance with the review standards would result in an extreme economic hardship or compelling economic need. The third purpose of the existing rule is to provide relief when a specific impact review is not necessary. Under the proposed rule, the third intention is to provide a waiver of review standards when the Commission determines that a waiver will not create an adverse impact on the Park and will not impair the intent of the Master Plan or the rules. The proposed purpose is consistent with the stated purpose of the proposed chapter, as set forth in proposed N.J.A.C. 7:45-1.1. The review standards that are subject to waiver are stream corridor impact; traffic impact; stormwater runoff and water quality; and visual, historic and natural quality. The

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Commission may waive review of projects that are for reconstruction or minor alteration, in accordance with proposed N.J.A.C. 7:45-12.8.

N.J.A.C. 7:45-12.2 Procedure

Under existing N.J.A.C. 7:45-9.2(a), an application for waiver stays the time period that may be set forth in this chapter for review of the project application, pending resolution of the waiver request. Proposed new N.J.A.C. 7:45-12.2(a) eliminates the stay.

Proposed new N.J.A.C. 7:45-12.2 requires that a request for waiver be in writing. The request must include all of the relevant documentation for project approval, as required under N.J.A.C. 7:45-3, including the documentation that is required for the provision sought to be waived. In this way, the Commission is sure to have a complete project application before it, in order that it can make an informed decision on whether the waiver is appropriate.

If the applicant seeks a waiver on the ground of extreme economic hardship, proposed N.J.A.C. 7:45-12.2(b) requires the applicant to submit specific documentation to justify the request. The documentation is necessary in order that the Commission can evaluate and determine whether a waiver based on extreme economic hardship is justified. The existing rule at N.J.A.C. 7:45-9 does not specify what documentation is required.

Proposed N.J.A.C. 7:45-12.2(c) has no counterpart in the existing rules. It requires the Commission staff to respond to an application for waiver within 30 days. This requirement corresponds to the procedure for reviewing applications for approvals, as described in proposed N.J.A.C. 7:45-3.4.

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Proposed N.J.A.C. 7:45-12.2(d) is based on existing N.J.A.C. 7:45-9.2(b); however, in addition to requiring the Commission to act on an application for waiver within 45 days from the date when the application has been declared complete, as in the existing rule, the proposed rule expands the provision by stating that special compensatory measures may be required by the Commission as conditions of a waiver approval. This provision is proposed in order to further ensure that a waiver from strict adherence to Commission's standards will not result in an overall adverse impact to the Park.

Proposed N.J.A.C. 7:45-12.2(e) also has no counterpart in the existing rules. Under this provision, the Commission shall issue a notice of decision concerning a waiver. The requirement of a formal decision corresponds to the similar requirement for applications for approvals at proposed N.J.A.C. 7:45-3.7.

Proposed N.J.A.C. 7:45-12.2(f) requires the Commission to advise the applicant, municipal reviewing agency, and persons who have requested notice that they may request an adjudicatory hearing, in accordance with proposed new N.J.A.C. 7:45-7.1. This proposed provision does not create a right to a hearing, but informs the interested parties that they may request a hearing, in accordance with the rules.

Under proposed N.J.A.C. 7:45-12.2(g), a waiver shall lapse if construction is not complete within five years from the date of the grant of the waiver, or if municipal permits expire, lapse or are revoked. This provision was added to be consistent with the proposed provision for expiration of approvals at N.J.A.C. 7:45-4.1.

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N.J.A.C. 7:45-12.3 Waiver of review standards due to extreme economic hardship or compelling public need

Proposed N.J.A.C. 7:45-12.3 is similar to existing N.J.A.C. 7:45-9.3. The proposed rule is organized into three sections: standards for meeting economic hardship; standards for meeting compelling public need; and general criteria that must be met for either type of waiver. As in the existing rule, the Commission may waive a requirement of N.J.A.C. 7:45 if the applicant makes a clear and convincing demonstration that the requirement would not be practical and would result in extreme economic hardship, or would conflict with a compelling public need. The applicant must also show that the project will not impair the intent and purpose of the rules or the Master Plan.

When it reviews an application for waiver based on extreme economic hardship, the Commission will use the standard set forth in proposed N.J.A.C. 7:45-12.3(b). Proposed N.J.A.C. 7:45-12.3(b)1 and 2 are the same standards as in existing N.J.A.C. 7:45-9.3(b). Proposed N.J.A.C. 7:45-12.3(b)3 is new, and requires that the applicant demonstrate that the property has been offered for sale to the Department's Green Acres Program, but the program has no interest in acquiring the property. The Green Acres Program's decision on willingness to buy a property at fair market value is an important factor in determining if an applicant will experience extreme economic hardship if the development application is denied.

Proposed N.J.A.C. 7:45-12.3(c) is the same as existing N.J.A.C. 7:45-9.3(c)1 through 4, and sets forth the standards that the applicant must meet in order to show that a waiver based on compelling public need is necessary.

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Except for additional language at proposed N.J.A.C. 7:45-12.3(d)1, proposed N.J.A.C. 7:45-12.3(d)1, 2 and 3 correspond to existing N.J.A.C. 7:45-9.3(c)7, 6, and 5, respectively. Proposed N.J.A.C. 7:45-12.3(d)1 requires the minimum relief necessary to relieve the hardship or need in granting the waiver.

N.J.A.C. 7:45-12.4 Waiver of stream corridor impact standards

Existing N.J.A.C. 7:45-9.4 provides two circumstances under which an applicant may be granted a waiver from strict adherence to stream corridor standards. The first requires that the project will not have an adverse impact on the stream corridor's ability to function as a buffer for the stream's ecological health and as a natural area. The second circumstance is that the project incorporates environmentally sound site planning techniques, or preserves other natural areas, and will have an equivalent effect as strict compliance with the rules would have. The existing rule would not consider a waiver of stream corridor review under the second circumstance for a proposal that includes an intrusion into the 100-year flood plain of the stream corridor.

Proposed new N.J.A.C. 7:12.4 has the same first condition as the existing rule. The second condition differs somewhat, in that the demonstration is not that the project will have an equivalent effect as strict compliance with the rules, but that the project will have greater beneficial effect than would strict compliance. In almost any case where the Commission would accept mitigation for allowing intrusion into the corridor, there will be a time lag in reaching the ecological benefit of the proposed mitigation. For example, as mitigation for the allowance of an intrusion into a vegetated buffer, the Commission would consider a retirement and revegetation of an area currently farmed. Depending on the age of the existing vegetation to be disturbed by

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construction, the plantings in the retired farmland would take anywhere from five to 50 years to provide the same benefits. Also, the proposed rule will not allow a waiver under the second circumstance for projects that have intrusions within 150 feet of the tops of the banks of water courses that drain directly into the Canal. Based on the current scientific literature, 150 feet from the top of bank is a minimum buffer to protect streams feeding a drinking water supply. This provision will minimize the environmental impacts of non point source pollution, potentially caused by construction, on waters that will flow directly into a drinking water source for 1.5 million people.

N.J.A.C. 7:45-12.5 Waiver of traffic impact standards

Proposed N.J.A.C. 7:45-12.5 continues the availability of a waiver of the traffic impact standards in the existing rule at N.J.A.C. 7:45-9.5. The language of the proposed rule differs from the existing rule, but the intention and impact is the same. The Commission will grant a waiver from the traffic impact review requirements if the applicant can show that the project will not have a direct traffic impact on the Park.

N.J.A.C. 7:45-12.6 Waiver of stormwater runoff and water quality impact standards

In the existing rules, waiver of stormwater runoff and water quality impact review provisions are at N.J.A.C. 7:45-9.6. As in the existing rule, proposed N.J.A.C. 7:45-12.6(a) provides for a waiver from stormwater runoff and water quality impact review if the applicant establishes that the project will not adversely affect the quality of the surface waters of the Park,

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and that the groundwater effects produced by the project produces are unlikely to measurably harm the quality of groundwater or surface water of the Park.

Proposed N.J.A.C. 7:45-12.6(b) requires an applicant to demonstrate to the Commission that a waiver based on extreme economic hardship or compelling public need is necessary for a project involving the installation of a new outfall or the discharge of stormwater into waters or conduits that flow into the Canal. The applicant must also propose to treat any discharges from the project to a water quality standard of 95 percent TSS removal.

If the Commission finds that treatment to the 95 percent TSS removal standard would result in an extreme economic hardship, or the project will serve a compelling need, such that a lower treatment standard is appropriate, the applicant must mitigate the environmental harm. The mitigation can be in the form of treating untreated stormwater in the Canal's drainage basin; or a cash donation to the mitigation bank that the New Jersey Water Supply Authority administers, which funds would be used for water quality improvement projects in the Canal.

A recent study conducted by the New Jersey Water Supply Authority substantiates the premise that flow from existing outfalls to the Canal contributes significantly to non-point source pollution in the Canal. The prohibition of new outfalls and strategies for mitigating pollution from existing outfalls will be instrumental in diminishing non-point source pollution. If this prohibition is not feasible, contribution to a mitigation bank as outlined in this new provision would help lessen the harmful impact of the new outfall, by providing water quality treatment for the Canal.

N.J.A.C. 7:45-12.7 Waiver of visual, historic and natural quality impact standards

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Like the existing rules at N.J.A.C. 7:45-9.7, the proposed rules include a provision for waiver of visual and natural quality impact standards. Consistent with the proposed rules' consideration of historic impact, the proposed rules add a waiver of historic impact standards. As in existing N.J.A.C. 7:45-9.7(a) through (c), proposed N.J.A.C. 7:45-12.7(a) through (c) require an applicant to establish that visual screening will continue to exist, and natural terrains, soils and vegetation are to be preserved, whenever possible. New vegetation and soils are to be native to the environment. If there is a divided highway between the project site, such that the road and traffic create a sufficient barrier to the visual impact of the project, or if the project is an addition to a pre-existing nonconforming structure, and the proposed addition will not further impose on the character of the Park, then waiver of the setback requirement is possible.

The protection of the scenic quality of the Park is a critical element of these regulations. Accordingly, proposed new (d) allows the Commission to impose additional restrictions, conditions, or compensatory measures, in order to mitigate the impact of a waiver. The scale and scope of mitigation will depend on the setting and severity of potential impacts. Examples of mitigation will range, for a minimal impact, from the requirement of plantings to screen the new development from the view of Park patrons, to the extensive restoration of an historic structure for severe potential impacts.

N.J.A.C. 7:45-12.8 Waiver of reconstruction or minor alteration of view

Proposed N.J.A.C. 7:45-12.8 provides for waiver of reconstruction or minor alteration requirements. As in the existing rule at N.J.A.C. 7:45-9.8(a), waiver is possible if the applicant establishes that the project consists solely of the reconstruction of a previously existing structure

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that was partially destroyed by natural disaster, provided the reconstruction will not increase the use or exterior dimension of the structure. Waiver is not available for reconstruction of a structure that has been totally destroyed. The proposed rule adds the requirement that in Zone A, the reconstructed structure must look the same as before the destruction.

N.J.A.C. 7:45-12.9 Exclusivity of waiver

Proposed N.J.A.C. 7:45-12.9, like existing N.J.A.C. 7:45-9.9, limits a waiver to the standard for which it was issued. Waiver of one standard does not constitute waiver of any other standard in the proposed chapter.

N.J.A.C. 7:45-13 Fees

When the Commission was created by statute in 1974, the legislation included an appropriation of “\$50,000 for the use of the Delaware and Raritan Canal Commission in performance of its powers and duties pursuant to this Act.” Subsequent State budgets included a line item, “For expenses of the Delaware and Raritan Canal Commission.” In order to cover the increasing expenses and duties of the Commission, the amount increased over approximately 30 years to a high of \$389,000.00. Expenses in excess of the amount budgeted were paid out of the Department’s Division of Parks and Forestry budget, as the Commission works with the Division as partner in the protection and management of the Park.

Due to continued fiscal shortfalls, the Legislature discontinued the direct appropriation for the Commission in fiscal year 2003. At that point the Commission was funded solely from the Division of Parks and Forestry budget. During the summer of 2007, the Legislature amended

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the statute creating the Commission, authorizing the Commission to “establish and charge, in accordance with a fee schedule to be set forth by rule or regulation adopted pursuant to the ‘Administrative Procedure Act,’ P.L. 1968, c.410 (C.52:14B-1 et seq.), reasonable fees for (1) the review of applications for a proposed governmental, public or private project and other applications filed with or otherwise brought before the Commission, and (2) other services the Commission may provide.” Amendments to the Act were signed by the Governor in the fall of 2007.

The proposed fees are a direct result of those amendments. Due to continued fiscal concerns and the need to reduce dependence on Legislative appropriations, the Department has committed to shifting the Commission to a fee-based program. The proposed fees will accomplish that commitment. The Commission’s current annual Budget is approximately \$450,000, including salaries, fringe benefits, indirect costs, and operating costs (such as legal expenses, office supplies, rent, phones, and vehicle maintenance).

In anticipation of proposing a fee schedule, Commission staff recorded, by month, each type of application received and work accomplished (such as exemptions, jurisdictional determinations, projects that would qualify for a general permit, major subdivision and site plan reviews) for a period of one year. Commission staff then collected information on existing permit review fees from both State agencies and municipalities. The proposed fees incorporated those aspects of other land use reviews that most closely matched the Commission’s review work and estimated staff time needed to review applications based on their complexity. Lastly, the proposed fees were finalized by applying them to the past year’s applications and making slight

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modification so that the fees would provide sufficient revenue for the Commission's estimated annual budget.

Proposed new Subchapter 13 contains the fees the Commission proposes to charge to review applications for Commission jurisdiction determinations, Commission general permits, and Commission individual approvals, with or without waivers.

The Act requires that the Commission prepare a master plan that gives due consideration to the function of the Canal as a major water supply facility, existing historical sites, and designated wilderness areas. Thus, a project may be subject to one or more components of impact review. The diversity of potential impacts that projects may have on the Park requires very different types of staff review. The fee schedule has been structured to reflect the type or types of impact review required for each project application.

The fees proposed for the review of projects within the Commission's review zone affect those who develop property and those who purchase property. Property with permit and development approvals is more costly than property sold contingent upon receiving such approvals, since the property owner can recover the costs of obtaining a permit directly from the purchaser who will have the benefit of using the property.

The proposed permit fees are intended to cover the Commission's cost to review a permit application and provide all associated services that support the permit review and permit related needs of the regulated community. For example, the Commission provides jurisdictional determinations to potential applicants so that they know, in advance of undertaking an activity, whether a permit is required for a proposed project. In some instances, where an approval is not required, no further involvement with the Commission is necessary.

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The Commission participates in pre-application meetings to discuss apparent strengths and weaknesses and the procedures and policies that would apply to a particular development. This service is provided to prospective applicants so that their application to the Commission is comprehensive and complete. In order to give complete and accurate information to a prospective applicant, Commission staff prepare for a meeting by reviewing aerial photography and mapping to assess the existing site conditions, researching the history of the site and investigating the applicable rules pertinent to the application. The Commission expends considerable time and resources preparing for, scheduling and conducting the pre-application meeting.

The Commission may be required to issue an emergency permit authorization in cases where it determines that there is an imminent threat to lives or property or that there is potential for severe environmental degradation if regulated construction activities are not immediately undertaken. An emergency permit authorization requires the Commission to make an immediate site inspection of the project site in order to verify imminent danger and to issue the authorization. These Commission activities are all required in advance of the submission, to the Commission, of the application.

Jurisdictional determinations, pre-application meetings, application reviews, site inspections and other such services are an integral part of the Commission's regulatory program and must be supported by the Commission's permit fees.

N.J.A.C. 7:45-13.1 General fee provisions

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Proposed N.J.A.C. 7:45-13.1(a) requires each application to be accompanied by the appropriate fee or fees. The fees in proposed N.J.A.C. 7:45-13.2 are for the activities that the Commission undertakes on a project; thus, a single project may be subject to multiple fees, depending on what the project entails. The type of acceptable payment appears at proposed N.J.A.C. 7:45-13.1(b). N.J.A.C. 7:45-13.1(c) describes how a Commission approval may be comprised of several review components, and that the applicant shall be required to pay a fee for only those reviews or activities that the application requires.

N.J.A.C. 7:45-13.2 Fee schedule

Proposed N.J.A.C. 7:45-13.2(a) establishes a fee for a written jurisdictional determination. The Commission will orally advise applicants whether a project will require review and approval without charge. However, if an applicant wants a jurisdictional determination in writing, the Commission will charge \$50.00 to provide that letter.

At proposed N.J.A.C. 7:45-13.2(b) there is a \$50.00 fee for obtaining authorization under General Permit 1, Maintenance and Repair of Existing Features. Because this general permit is for work that will not visually alter the exterior of an existing structure, it does not require technical review. Accordingly, the fee is lower than for an individual approval.

N.J.A.C. 7:45-13.2(c) establishes a \$100.00 fee for obtaining authorization under proposed General Permit 2, Single Family Residential Additions. This general permit applies only to those additions in Zone A that have less than 800 square feet of cumulative impervious surface area and are entirely screened from the view of a person in the Park, as described more fully at N.J.A.C. 7:45-6.2. This general permit will also not require technical review. If a Single

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Family Residential Addition in Zone A does not meet those conditions, an individual approval is required with associated fees required at N.J.A.C. 7:45-13.2(d) through (k).

N.J.A.C. 7:45-13.2(d) proposes a \$250.00 fee for the review of visual impact of a minor project in the A Zone. This review requires at least one site inspection by Commission staff, as well as an analysis conducted by staff of any visual impact that a project may have on the Park. This review includes the analysis of the project as it impacts the D&R Canal National and State Historic Districts. The review may require a pre-application meeting. Because minor projects in the A Zone are limited in size, a per lot or per acre fee is not imposed.

N.J.A.C. 7:45-13.2(e) establishes a \$500.00 base fee plus \$100.00 per municipal tax lot for the review of visual impact of a major project in the A Zone. The flat fee plus a per lot fee is necessary because the size of a property reflects the time and complexity of the required review.

Proposed N.J.A.C. 7:45-13.2(f) establishes fees for the review of stormwater management in accordance with N.J.A.C. 7:45-8. The proposed fees for stormwater management review of minor projects in Zone A are significantly less than fees for major projects because the impact on drainage and water quality of these projects is considered to be de minimis, and the scope of review is much smaller. For single family homes, duplexes, or projects adding less than 800 square feet of new impervious surface, a flat fee of \$100.00 is proposed. For all other minor projects in the A Zone, a flat fee of \$500.00 is proposed.

All major projects within the Commission's Review Zones A and B that require review of stormwater calculations will be assessed a base fee of \$2,000. This base fee is required because every major project must be evaluated with regard to the use of nonstructural methods, as described at N.J.A.C. 7:45-8.4. A review for the remaining three standards, groundwater

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recharge, runoff quantity and water quality, is required depending on the size of land area disturbed by the project. A project could potentially be subject to some or all of these three standards. It is appropriate, therefore, to establish a separate fee for the review of each of these three standards.

The proposed fee for review of groundwater recharge and runoff quantity standards for major projects appearing at N.J.A.C. 7:45-13.2(f)3 is proportional to the area of disturbance on a site. Projects disturbing less than three acres will be assessed an additional \$500.00 for the review of groundwater recharge calculations or runoff quantity calculations. Similarly, projects disturbing between three and 10 acres will be assessed an additional \$1,000; projects disturbing between 10 acres and 100 acres will be assessed an additional \$2,000; and projects disturbing over 100 acres will be assessed an additional \$4,000. Additional fees for the review of runoff quantity calculations are established at the same level at proposed N.J.A.C. 7:45-13.2(f)4. In many cases, a review of both groundwater recharge calculations and runoff quantity calculations will be required and separate fees will be assessed.

Proposed N.J.A.C. 7:45-13.2(f)5 establishes a fee for water quality calculations. The proposed fees for the review of water quality calculations are tied to the total area on a site proposed for disturbance.

Proposed N.J.A.C. 7:45-13.2(g) establishes fees for review of stream corridor impact review. For single family homes, duplexes, or projects adding less than 800 square feet of new impervious surface, a flat fee of \$250.00 is required. The impact of these projects on a stream corridor is considered to be de minimis and, thus, the scope of review is smaller than that of other minor or major projects. For all other minor projects in the A Zone, and for all major

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projects requiring review of stream corridor impact, a flat fee of \$2,000 is proposed, with an additional \$1,000 assessed should a waiver from strict compliance of the regulation be required. Review of a waiver request requires a site inspection and consideration of mitigation proposals in addition to a technical review, thereby necessitating further staff time.

A flat fee of \$500.00 for review of traffic impact for all projects is proposed at N.J.A.C. 7:45-13.2(h). Staff review includes analysis of traffic reports, analysis of the extent of traffic on the Park of the proposed project, and review of alternatives analyses.

Proposed N.J.A.C. 7:45-13.2(i) establishes a flat fee of \$100.00 for lot line review of subdivision applications. This type of review involves determining the potential impact of future construction on the Park. The review is primarily a jurisdictional determination and not a technical review.

Under proposed N.J.A.C. 7:45-13.2(j) there is no fee for minor modifications to a project after issuance of an approval, in accordance with proposed N.J.A.C. 7:45-4.2. There is, however, a fee at proposed N.J.A.C. 7:45-13.2(k) for a major modification to a project after issuance of an approval. The fee for a major modification is proposed to be 25 percent of all fees originally charged for the approval that is being modified.

The existing rule at N.J.A.C. 7:45 allows for the granting of extensions to approvals provided the project met certain conditions. For any project that received an approval before the adoption date of these proposed rules, proposed N.J.A.C. 7:45-13.2(l) establishes a flat fee of \$50.00 for an extension of that approval. In accordance with proposed N.J.A.C. 7:45-3.1(c), an application that is determined or deemed to be complete prior to the effective date of the within rules is subject to the substantive requirements of the existing rules. However, the application

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(or project) will be subject to the proposed fees for each activity that the applicant or holder of an approval requests after the effective date of these rules. Thus, if an applicant or the holder of an approval requests a modification, or an extension, or any other activity from the Commission, a fee is required.

In accordance with N.J.A.C. 7:45-13.2(m), there are no fees for projects proposed by the Division of Parks and Forestry or the New Jersey Water Supply Authority. These agencies are responsible for the maintenance and rehabilitation of the Canal and all Canal structures in the Park, and for the protection of the Park's natural and recreational resources.

N.J.A.C. 7:45-14 Severability

As in existing N.J.A.C. 7:45-10.1, proposed N.J.A.C. 7:45-14.1 allows the remaining portions of the proposed chapter to remain in effect, if one or more portions are deemed unconstitutional or invalid.

Social Impact

The proposed repeal and new rules are anticipated to have an overall positive social impact.

The citizens of the State will benefit from the protection of the resources in the Commission's review zone. The continued protection of environmentally sensitive areas provides open space, recreation and the protection and restoration of a major source of potable water for the benefit and enjoyment of the public. The proposed repeal and new rules may

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discourage development in the most sensitive area of the Commission's review zone, and channel development to areas with fewer environmental constraints.

Economic Impact

The proposed repeal and new rules are anticipated to have an overall neutral or slightly positive economic impact. The proposed rules will shift the cost of the regulatory program from the entire tax paying population to those who are proposing specific improvements to their properties. In general those improvements will increase the value of their property and will offset the cost of permit review, which is estimated to be a relatively small percentage in relationship to the overall costs of the improvements.

To the extent that the proposed fees discourage development within environmentally sensitive resources within the Commission's review zone, the proposed repeal and new rules would reduce the cost of treating the water in the Canal to make it potable. If development within the review zone is constructed in a more environmentally sensitive approach, the cost of maintenance or repair of the Canal that may be damaged due to increased potential from flooding could also be reduced. An example of this is the protection of the stream corridor buffers associated with water courses entering the Park. By not developing within the stream corridors, the vegetative cover will remain, filter stormwater entering the stream and attenuate downstream flooding impacts.

The proposed repeal and new rules may have a slight negative economic impact for the building industry because they will increase costs for construction in the Commission's review zone. However, the proposed fees will likely constitute a relatively small portion of the overall

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cost of the development project. The following is a brief description of the some of the fees and examples of the potential range of costs (based on scope of project and its potential impacts).

General Permits 1 and 2 are anticipated to be requested primarily by single family home owners and small businesses for maintenance or small additions. The proposed fee for General Permit 1, for the maintenance and repair of legally existing features is \$50.00. The proposed fee for General Permit 2, for the additions or improvements of up to 800 square feet to single family residential dwellings is \$100.00.

The minimum fee charged for the review of a minor project located in the Commission's Review Zone A (closest to the Park and potentially impacting the historic district) is \$350.00, for review of stormwater and visual impacts with no stream corridor impacts. Minor projects are those involving less than 0.25 acres of new impervious surface or one acre of land disturbance. At the opposite end of the range of fees, an example of a fee for a major project in the A Review Zone requiring review of all aspects of the Commission's regulations (visual, stormwater, stream corridor and traffic impacts) for 50 acres of disturbance and 100 residential lots would be \$22,000. If the developer passes this cost to the new homeowners the cost would be \$2,200 per house.

The minimum fee charged for the review of a major project located in the Commission's Review Zone B (over 0.25 acres of new impervious surface and over one acre of land disturbance, requiring only stormwater review) would be \$3,500. An example of a fee for the same-size project as described above (50 acres disturbance with potential stream corridor and traffic impacts), but in the Commission's Review Zone B, would be \$11,000. The fee is less

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than the same project in Zone A because it does not have potential visual impacts on the Delaware and Raritan Canal Historic District.

Lowering the Commission's regulatory threshold for major projects from one acre of impervious to 0.25 acre of impervious surface or 1 acre of disturbed surface will increase the number of projects under Commission review, and thus potentially increase costs to developers. However, the new thresholds are consistent with those currently in place for both the Department and municipal stormwater regulatory programs and compliance with the new standards should not impose additional costs.

The other significant change in the Commission's regulatory standards that may have an increased economic impact on development is the proposal for a minimum 300-foot buffer adjacent to those waterways that flow into the Canal, a public water supply. This change, however, is also consistent with the Department's protection of public water supplies under Category One standards for water quality. While the requirement of a minimum 300-foot buffer may have slight economic impact on the development envelope, it will be offset by overall gains in water quality to the benefit of the approximately 1.5 million users of this water system.

Environmental Impact

The proposed repeal and new rules are anticipated to have a significant positive environmental impact. The more stringent standards required in the proposed new rules for stream corridor impact and stormwater runoff and water quality impacts will provide greater protection from flooding, erosion and water quality degradation and loss of groundwater recharge from stormwater runoff associated with new major development that the current

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standards. Erosion prevention and stormwater management standards are proposed which will provide protection for downstream areas being impacted by upstream development. In general, controlling pollution associated with stormwater and requiring natural buffers for streams in the Canal's drainage basin preserves the integrity of the environment and will lead to improvements in water quality and reduction of flooding, providing a positive environmental impact to the citizens of New Jersey. Specifically, prohibiting new outfalls into the Canal and waterways flowing into the Canal will protect and restore the water quality of the Canal. The addition of streams that drain to the Park to the list of stream corridors will result in greater protection and restoration of the quality of the water entering the Park.

Federal Standards Statement

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c.65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. There are no current, analogous Federal requirements for the regulation of a State Park as a recreation area, source of potable water and as an historic district; however, there is one Federal program concerning stormwater runoff and nonpoint source pollution control. This is discussed below.

Clean Water Act

The Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) requires permits under Section 402 of that Act (33 U.S.C. § 1342) for certain stormwater discharges. The Department's requirements to obtain such permits are set forth in the New Jersey Pollutant Discharge

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Elimination System Rules, N.J.A.C. 7:14A, rather than in these proposed new rules.

Accordingly, the within rules do not conflict with, and are not more stringent than the Federal Clean Water Act.

The proposed repeal and new rules do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law. Accordingly, Executive Order 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) do not require any further analysis.

Jobs Impact

The proposed repeal and new rules establish the procedure for the review of physical development in the Park, and set forth the standards and fees to be applied to the Commission's review of private and public projects that impact on the Park. The fees associated with the proposed repeal and new rules are not anticipated to be of a magnitude that would lead to the creation or destruction of jobs in the State. The proposed repeal and new rules are not anticipated to have an impact on jobs in New Jersey.

Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4, this rulemaking has been evaluated to determine the nature and extent of the impacts of the proposed amendments on the agriculture industry. The proposed repeal and new rules will have no impact on agricultural activities.

Regulatory Flexibility Analysis

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In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Commission and Department have determined that some of those builders and property owners that may be affected by the proposed repeal and new rules are “small businesses.” The Commission’s Review Zone Regulations apply to anyone proposing regulated activities within the geographic scope of the Commission’s Review Zone. It is impossible for the Commission to estimate the exact number of small businesses that own property that will be affected by the proposed repeal and new rules.

The proposed repeal and new rules will impact small businesses in several ways. More small businesses will be required to apply for Commission review and approval of their projects as a result of the proposed regulation to lower the Commission’s threshold for review from one acre of impervious surface to 0.25 acres of impervious surface (to be consistent with the current Department and municipal stormwater regulations). Small businesses may also be impacted by the other proposed change in a minimum standard of a 300-foot buffer on water courses that discharge directly to the Canal. These changes, however, will not result in an excessive negative impact on small businesses because there are specific waiver provisions proposed for projects that are not in strict compliance with the regulations but that can demonstrate that the project will result in minimal environmental impacts or for applicants that can justify economic hardship.

To comply with the rules, small businesses may have to submit permit applications, which may require engineering support work, assistance in evaluating the environmental impact of projects, and an application fee. The cost of retaining professionals to assist in the project will depend on the scope and location of the project. Likewise, extent of information required in an application and the amount of the application fee depend upon the scope and location of the

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proposed project. To the extent that small businesses are likely to propose smaller-scale projects than larger businesses, their application fees will also be lower.

The proposed repeal and new rules will also positively impact small businesses. For example, the proposed new general permit 1 is geared specifically to small businesses and homeowners. Under this provision, projects construed as maintenance only can be approved by staff authorization, which greatly reduces the time otherwise required for a full Commission review and approval procedure. In addition, the proposed \$50.00 fee for this type of project is nominal. Also, since the fees are scaled to the amount of land disturbed, if a small business is proposing a “smaller” footprint of disturbance, the application fee will be significantly less than a larger project.

Notwithstanding the above examples of lessened impacts for small businesses, the proposed repeal and new rules will, in general, have the same impact on a small business as on single family home owners. The proposed rules will have the most significant impact on large scale developers.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedures Act (N.J.S.A. 52:14B-4(a)), to describe the impact of the proposed rules on the achievement of Smart Growth and implementation of New Jersey State Development and Redevelopment Plan (State Plan).

The proposed repeal and new rules are consistent with the law and policy of New Jersey to promote smart growth and to reduce the negative effects of sprawl and disinvestments in older

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communities, as described in Executive Order No. 4 (2002). The proposed rules discourage incompatible development of environmentally sensitive features, which are vital to the health and well-being of the present and future citizens of the State.

The proposed fees are consistent with smart growth policy, since the fees are necessary to support the Commission's regulatory program. The Commission ensures that development in environmentally sensitive areas, which is likely to have a greater environmental impact and related economic costs than development outside these areas, is closely scrutinized and, as appropriate, discouraged.

The proposed rules regulate the redevelopment of existing impervious areas of 0.5 acres or greater in size draining into water courses that drain into the Canal. The proposed rules also prohibit new sources of stormwater from draining into those water courses. While the Commission encourages redevelopment, non point source pollution is the single greatest impact to the water quality of the Canal. As previously stated, the Canal is a source of drinking water for approximately 1.5 million users in the State. These redevelopment projects would be regulated for their potential impact on water quality impact only, and not for their impact on water quantity. In most cases the water quality impacts of the project may be addressed by the addition of manufactured water quality treatment devices that will not significantly impact the developable area of the tract, thereby still encouraging redevelopment, but addressing an existing source of nonpoint pollution to the drinking water supply.

The proposed rules also allow for offsite mitigation or contribution to a mitigation bank to address nonpoint source pollution to the Canal, if adequate space is not available for onsite water quality treatment. This provision is proposed specifically to achieve the goal of improving

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water quality in the Canal, while encouraging redevelopment of urban areas. Therefore, the proposed amendments comport with the goals of smart growth and implementation of the State Plan described in Executive Order No.4.

Housing Affordability Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the proposed repeal and rules at N.J.A.C. 7:45-1 et seq. have been evaluated for purposes of determining their impact, if any, on the affordability of housing. There is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing. The proposed rules include fees for the review of new construction projects by the Commission; however it is important to note that the Commission does not regulate the reuse of interiors of existing buildings. Therefore, the conversion of existing buildings for affordable housing will not be impacted by the proposed repeal and new rules.

The proposed rules include fees for the review of projects within the Commission's review zone. The Act requires that the Commission prepare a Master Plan that gives consideration to the function of the Canal as a major water supply facility, existing historical district and recreation area. Thus, a project may be subject to one or more components of impact review (stormwater, visual, stream corridor or traffic impacts). The diversity of potential impacts that projects may have on the Park requires very different types of staff review. The fee schedule has been structured to reflect the type or types of impact review required for each project. Therefore, those projects that have a limited footprint of disturbance and have been designed in an environmentally sensitive manner will require a lower review fee.

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The following is an example of the proposed fee schedule applied to a hypothetical major project in the Commission' B Review Zone. The hypothetical project involves 10 acres of disturbance (not the total project site), with a stream corridor present on site (but not proposing impacts to the corridor) for the construction of 40 clustered units. The fee for stream corridor review would be \$2,000.00, the fee for stormwater review would be \$5,000.00 for a total review fee of \$7,000.00. If the developer passed the entire cost of the fee onto the buyers it would raise the price of the unit by \$125.00. The Commission believes there is an extreme unlikelihood that the proposed rules would evoke a change in the average costs associated with housing.

Smart Growth Development Impact

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the proposed repeal and new rules have been reviewed to determine their impact, if any, on smart growth development through a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

The proposed rules are drafted to recognize urban and suburban areas and encourage development in those areas by a decreased setback for suburban areas for new development adjacent to the Canal Park and requiring no setback for new development from the Canal Park in Urban areas. In addition, alternative forms of mitigation are provided in the stormwater section of the rules to allow and encourage redevelopment in urban areas.

It is anticipated that the proposed fees will have a minimal impact on the construction of new housing. The fees are largely based on the proposed area of disturbance; therefore, smart growth housing built on compact sites will be assessed smaller fees than typical subdivisions.

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The following is an example of a fee for a typical subdivision: the fee for a major project in the A Review Zone (the zone most sensitive to impacts from new developments) requiring review of all aspects of the Commission's regulations (visual, stormwater, stream corridor and traffic impacts) for 50 acres of disturbance and 100 residential lots would be \$22,000. If the developer passes on the entire cost to the new homeowners, instead of reducing a portion of its profit on a unit, the cost would be \$2,200 per house.

The rules are not anticipated to evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:45.

Full text of the proposed new rules follows.

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

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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; 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:

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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.

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“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.

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“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

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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

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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

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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. All or parts of the following counties and municipalities are included in the Review Zone:

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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

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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,

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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.

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- 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.

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- 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 Exemption, 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 an exemption letter 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

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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 Exemption letters

(a) An applicant with a project that qualifies for an exemption under this chapter may obtain a letter from the Commission certifying that the project is exempt. 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.

(b) An exemption letter 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

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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:

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- 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)

(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.)

	Stormwater Runoff and Water Quality Impact	Stream Corridor Impact	Traffic Impact	Visual, Historic & Natural Impact
Zone A				
Minor Project	X ¹	X		X
Major Project	X	X	X	X
Zone B				
Major	X	X	X ²	

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Project

¹ If project will result in 800 square feet or more of impervious surface, cumulatively since January 11, 1980

² 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 [the effective date of these new rules] shall be reviewed in accordance with the D&R Canal State Park Review Zone rules in effect on [the date one day prior to the effective date of these new rules]; however, each applicant, or holder of an approval or authorization under a general permit shall be subject to a fee in accordance with

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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 [the effective date of these new rules].

- (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

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

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

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- (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

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appropriate municipal and county approving agencies in accordance with N.J.A.C. 7:45-3.2) 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, such as at N.J.A.C. 7:45-4.1(h)

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

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- (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

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- (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 the Governor in writing 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.

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- (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

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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.
 - 1. If some regulated activities have occurred onsite prior to the expiration of the original individual permit, a new individual permit shall be issued only if the project is revised where necessary to comply with the requirements of this chapter in effect when the new application is submitted; and
 - 2. If some regulated activities have occurred onsite prior to the expiration of the original individual permit, a new individual permit shall be issued only if the project is revised where feasible to comply with the requirements of this chapter in effect when the new application is submitted. In determining the feasibility of compliance with the current requirements of this chapter, the Commission shall consider the amount of construction that was completed onsite prior to the permit expiration, as well as whether continuing construction as originally approved would constitute an adverse impact on flooding or the environment.
- (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

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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 a permanent or temporary Certificate of Occupancy.
- (k) Within three months of the issuance of a permanent Certificate of Occupancy, 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

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- (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.

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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.

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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.
 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.
 5. A resolution of approval of the proposed project by the appropriate municipal and county approving agencies.
- (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

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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.

5.3.

(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;

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- 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 (including a resolution of approval of the proposed project by the appropriate municipal and county approving agencies), 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 subchapter 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

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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:

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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

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- (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

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- (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 at any time by the Commission under this chapter, 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;

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- 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;

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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

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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.

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SUBCHAPTER 8. STORMWATER RUNOFF AND WATER QUALITY IMPACT

REVIEW

7:45-8.1 Purpose and scope of review

(a) The Commission shall review all projects within Zone A and Zone B for stormwater runoff and water quality impact except for those projects expressly exempted by this chapter or waived by the Commission. 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 $\frac{1}{4}$ 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 foot contour intervals;
4. Photos of drainage and site conditions;
5. Description of existing site conditions including outlines of woodland cover and

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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

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(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, all stormwater being discharged through the outfall shall be treated to achieve 95 percent TSS removal, 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:

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- (i) An equivalent reduction in TSS loadings for twice the volume of stormwater generated by the proposed project during the water quality design storm; or
 - (ii) 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:

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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;

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- 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. The applicant may submit the Department's Nonstructural Stormwater Strategies Point System worksheet (available at 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 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.

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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.

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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.
 - (b) Guidance on these analyses is at (a)1 above is provided in the New Jersey Stormwater Best Management Practices Manual for stormwater runoff and groundwater recharge calculations.

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 at N.J.A.C. 7:8-5.6, Calculation of 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.
 - i. 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.

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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;

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

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runoff may take into account the implementation of non-structural and structural stormwater management measures.

Table 1
Water Quality Design Storm Distribution

Time (Minutes)	Cumulative Rainfall (Inches)	Time (Minutes)	Cumulative Rainfall (Inches)
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

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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. 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:

$$R = A + B - (AXB)/100 \text{ Where}$$

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

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Table 2

TSS Removal Rates for BMPs

Best Management Practice TSS Percent Removal Rate

Bioretention Systems	90
Constructed Stormwater Wetland	90
Extended Detention Basin	40-60
Infiltration Structure	80
Manufactured Treatment Devices	50-80
See certification by NJCATS on njstormwater.org	
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.

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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'

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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.

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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.

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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.

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- (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;

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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

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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

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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.

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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

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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:

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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.

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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;

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- 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..

SUBCHAPTER 11. TRAFFIC IMPACT

7:45-11.1 Review of major projects for traffic impact

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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;

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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

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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 to other interested parties including the contact persons and phone numbers (including

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adjacent land owners, the Department's Green Acres program, or other conservation groups) and that they are not interested in purchasing the property;

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.

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- (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

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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

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3. The applicant has provided documentation showing that the subject property has been offered for sale to the Department's Green Acres Program and that the Program has stated it has no interest in acquiring the subject property.
- (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

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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

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- (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

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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:

1. Visual screening will continue to exist in the future, and;
2. 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.

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- (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

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Waiver of review for a specific standard for a does not constitute a waiver of review for any other standard 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.
- (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.

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- (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 Zones:
 - 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 Zones 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.

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- 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 Zones 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.

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- (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 {the effective date of these regulations}.
- (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.