

August 013, 2021

## State Planning Rules update: Outline of sections with proposed changes of note

\*Formatting issues in track changes document are addressed in the clean copy

### **5:85-1.4 Definitions**

P 5. **Action Plan** – Revised to increase clarity.

p 6. **Certificate of Eligibility** – Removed. One of several options or steps in the PE process that isn't used or relevant.

P 6. **Critical Environmental Site (CES)** – Minor revision to the definition, DEP is OK with.

p 7. **Cross–Acceptance Report** - Revised to include development of an online “Response Template”. OPA believes a better approach would be to develop an online Cross Acceptance Response Template, whereby comments and/or multiple-choice responses could be more easily generated, uploaded, organized and analyzed by the OPA. Counties shouldn't be required to prepare their own standalone reports, but rather respond to the draft preliminary State Plan, using a simplified online format. Idea is to make participation easier and more efficient, as well as to use technology to organize comments in a manner that will be most useful to OPA.

p 7. **Display Ad** – Removed and replaced with Legal Advertisement. Reference to use of display ads only shows up a couple times in the Rules vs. legal advertisement which is more widely used/accepted practice.

p 6. **Distributed** - New definition added in response to request for global language to address allowance for both mailed and electronic distribution, i.e., means any document that is released either electronically, online and/or by first class mail.

p 8. **Historic and cultural site (HCS)** – Definition revised to remove reference to mapping of such areas in the State Plan Policy Map which isn't done as there are too many to map and otherwise duplicative to municipal historic and cultural resources inventory that is a conditional requirement for plan endorsement where warranted.

p 8. **Impact Assessment** – Revised to address climate change (mitigation and resiliency), social justice, and quality of life/community livability. Requirement is not found in the State Planning Act. If carried forward, consider adding language as to what this assessment should address, criteria, etc.

p 9. **Natural system** – Definition removed as term only used in definition of a CES.

p 9. **Neighborhood Plan** – Removed from definitions as SPC does not endorse units smaller than local government.

p 9. **OPA** – Definition revised to also mean “Office” in reference to OPA , or its successor.

p 10. **Plan Endorsement Advisory Committee** – Revised to render role as “liaison” optional, not required to reflect reality of what actually happens. With change, role limited to guide and assist, and increase public awareness of and participation in the plan endorsement process.

p 10. **PE Guidelines** – Minor revision, added language.

p 11. **Plan endorsement process or plan endorsement** – Revised to reflect updated language in the PE Guidelines 2020, including added references to the Action Plan and PIA.

p 11. **PE Renewal** – New section in Rules required a definition.

p 12. **Plan Implementation Agreement (PIA)** – Revised with an expanded definition – Meant to clarify expectations regarding consistency with the State Plan and mirror update to PE Guidelines.

p 12. **Plan Implementation Committee (PIC)** - Given definition, previously not defined.

p 12. **Regional Agency** – Definition changed to reflect regional guidance document created by OPA in 2020.

p 13. **Smart Growth Areas** – Definition created to correspond with the long-established Smart Growth Areas Map. It is hoped that the definition will create more uniform understanding in usage among State agencies and lawmakers, as there has been confusion in past.

p 14. **Written comment** – New definition created to mean public comment provided either electronically or by first class mail.

**Rules: New and/or revised language highlighted yellow**

**5:85-1.7 Public notice requirements, form content and timing** – For entity petitioning for a map amendment, language added to require notice to include adjoining municipalities.

**1.7(g) 1., By providing written notice to all owners of property that is subject of the petition and all owners of property within 200 feet of the property that is subject of the petition;**

Removed, “If petition is for a minor map amendment”... \*Revision is to ensure that 200 foot notice is made by a private entity in all cases where petition is for a mapping amendment.

**5:85-3.1 Commencement of comparing plans** - The State Planning Commission shall conduct a joint public informational meeting in person **or virtually upon request**, with each county planning board in each county for the purpose of providing information on the Preliminary State Development and Redevelopment Plan

**5:85-3.6 Municipal participation in the cross-acceptance process** – Removed the requirement for municipalities to provide certain planning documents as part of cross-acceptance, finding requirement an unnecessary and burdensome for towns and OPA.

**5:85-4.5 The negotiation process** - The staff of the Office of Planning Advocacy will meet in person **or virtually upon request** with the authorized representatives of each negotiating entity.

**5:85-5.2 Required public hearings** – (a) There shall be a minimum of six public hearings on the draft Final State Development and Redevelopment Plan in different locations throughout the state **or held virtually. At least one meeting will be held in person in a central location.**

**5:85-5.3 Municipal and county review and comment before adoption of Final State Development and Redevelopment Plan** – new language added: **The State Planning Commission shall provide an electronic format for providing written comments for this purpose. Municipalities and counties shall utilize the technology and instructions as provided by the State Planning Commission.**

\*Similar to the Cross-Acceptance reports, intent is to require utilization of online technology to streamline the comment and review process, which could save considerable public resources, while enhancing and modernizing the comment process. OPA believes that a uniform format/template has potential to greatly increase participation by simplifying the process, as well as ensuring that the comments provided are in organized in manner as useful as possible to the SPC.

**5:85-7.3 Applicability** - Regional entities have been further described per OPA’s guidance document, as well as expanded upon in definitions section.

**5:85-7.5 State agency responsibilities** - Each State agency member of the State Planning Commission, and any other relevant State agency or authority, at the request of the State Planning Commission or the Executive Director, shall prepare **and periodically update** a list of State agency benefits

**5:85-7.7 Pre-petition submission requirements, scheduling and meeting** - A prospective municipal petitioner **shall** request a meeting with the Office of Planning Advocacy when considering whether to petition for plan endorsement...

\*Pre-petition is a required step for PE. The word “May” changed to “Shall”.

**5:85-7.8 Advisory committee appointment and membership** - Expanded language from 2020 PE Guidelines update, regarding greater inclusion and public engagement, use of Green Teams. \*Received comments recommending discretion to allow Planning Boards or EC’s to serve in smaller towns. Response: Our concern is that in permitting use of an EC or Planning Board, towns will likely appoint their PB moving forward. The Green Team is uniquely suited for this role.

**5:85-7.9 Self-Assessment Report, form, content, adoption and submission requirements** - Item requirement checklist was substantially revised to reflect 2020 updates to the PE Guidelines and MSA Template.

**5:85-7.10 State agency Opportunities and Constraints Assessment and Report** – Minor language added to address social equity and resiliency to climate change

**5:85-7.11 Community visioning process, vision statement development and adoption, and submission requirements** - Minor edits integrating 2020 PE Guideline updates, including requirement to have at least one virtual public meeting/hearing, use of technology in outreach and engagement, and expanded efforts to engage socially vulnerable populations who have historically been underrepresented in these processes

**5:85-7.13 Consistency review** – Added language to address climate resiliency, GHG reduction and environment justice and update affordable housing requirements. Required natural resource protection ordinances also added.

**5:85-7.14 Finding of consistency and recommendation report** – If the Executive Director determines that additional action must be taken to complete the self-assessment, visioning or other action necessary to achieve initial consistency **with these steps** the Executive Director shall, in consultation with the relevant State agencies and petitioner, develop an Action Plan **within 45 days of the conclusion of the 90-day consistency review period**...

Comment: Initial consistency is the steps outlined in community visioning, self-assessment, and more generally, with the goals of the State Plan, and are addressed with completion of the Action Plan.

**5:85-7.15 Action Plan** – Moved section to come before PIA to reflect process as it actually now happens. Minor revisions made to increase clarity and expectations.

**5:85-7.16 Certificate of Eligibility** – Staff decision was to remove section as it is no longer used or relevant.

**5:85-7.17 Draft Plan Implementation Agreement and Memorandum of Understanding adoption, submission and completion** – This step now follows preparation of the Action Plan.

**5:85-7.17 (a) Within 45 days** of receiving the draft Plan Implementation Agreement and Memorandum of Understanding, the Planning Commission shall determine whether the draft Plan Implementation Agreement and Memorandum of Understanding are appropriate to achieve consistency with the State Plan and any

additional procedures from the State Plan Endorsement Guidelines and related support materials. \*Timeline for SPC action added.

**5:85-7.17(f) 7.** An approved Plan Implementation Agreement may only be amended for good cause shown at the discretion of the Executive Director. Any amendments to a Plan Implementation Agreement shall be provided to the Commission and the public pursuant to N.J.A.C. 5:85-1.7(h) and 7.4(b), **unless undertaken pursuant to N.J.A.C. 5:85-7.22(c).**

\*New language provides for minor revision to a PIA as outlined at 7.22(c).

**5:85-7.17(f) 8. 8. Endorsed plans and** Centers may be revoked by the Commission in the event petitioner fails to satisfy Plan Implementation Agreement deadlines, based on a recommendation by the Executive Director, in consultation with relevant State agencies.

\* When SPC takes action and revokes a Center and/or endorsed plan, should notice in the Register?

**5:85-7.18 Recommendation report, review of petition, and direct petition** – minor edits

**5:85-7.19 Plan endorsement by State Planning Commission** - See minor edits integrating 2020 PE Guidelines update language. References PIA consistency.

**5:85-7.21 Period of endorsement** – Minor edits, addition of language pertaining to Highlands Region eligibility, regarding receiving the same benefits for plan conformance communities.

(a) Endorsement of any plan shall be valid for 10 years.

\*Currently, if a municipality does not go through the process to renew their endorsement, it dies a natural death. SPC takes no action, and it just expires. Proposal is for OPA Register Notice upon expiration and has inquired with DAG as to whether official action should likewise be taken on the part of SPC. Also, should same process follow revocation by SPC of a Center and endorsed plan?

**5:85-7.22 Monitoring of endorsed plans and designated centers**

**7.22 (b)** Within one year from the date of endorsement, municipalities, counties, or other relevant planning entities having endorsed plans or previously designated centers shall provide an annual report to the Executive Director on the status of their Planning and Implementation Agreement efforts, with biennial reports due thereafter. **In order to be accepted by the Office of Planning Advocacy, the annual or biennial report must be submitted within 8 months of the year in which it is required.**

**7.22 (c)** - New language added to permit requests for minor revisions to PIA as part of biennial review at discretion of the Exec. Dir. in consultation with the PIC, unrelated to mapping changes.

**7.22 (d)** – New language added to have OPA provide a letter to towns at the 8<sup>th</sup> year biennial review, outlining any remaining incomplete tasks identified for completion under the PIA, as well as advise as to the extent to which the endorsed plan is presently eligible for PE renewal, based on the status of previous biennial submissions, overall performance and good faith efforts to date in completing tasks and meeting completion timelines as specified under the PIA.

**7.22 (e)** – New language added to have endorsed entities address remaining incomplete PIA items in the final 8-year biennial report which shall indicate intent to pursue Plan Endorsement Renewal, and if so, how the PIA efforts to date, demonstrate consistency with the State Plan and terms of the PIA. The extent to which the PIA tasks have been completed shall determine whether the endorsed entity shall be granted the opportunity to pursue the PE Renewal process or go through standard Plan Endorsement.

**7.22 (f)** - New language added. Within 6 weeks of receipt of the final 8-year biennial report, the Executive Director shall, in consultation with the PIC, send an electronic letter to the endorsed entity, advising which

endorsement process will be made available based on the extent to which the report has satisfactorily addressed any remaining tasks as outlined in the PIA. For reports that demonstrate substantial completion and overall good faith efforts to achieve consistency with the petition, the letter shall outline any remaining actions necessary for the Executive Director to certify eligibility to pursue PE renewal.

**5:85-7.23 Renewal of endorsed plans and designated centers** – New section integrating proposed renewal process.

**7.23 (c)** Twelve (12) months prior to the expiration of endorsement, the Executive Director shall, in consultation with the PIC, send an electronic letter advising the Petitioner, whether their PIA is consistent and up to date with the petition as endorsed by the SPC. For petitioners that have demonstrated meaningful progress towards the substantial completion of tasks under the PIA, and sustained engagement with the OPA, as evidenced by the submission of responsive biennial reports, the letter will certify their eligibility to pursue simple PE Renewal.

**7.23 (d)** If eligible, within ten (10) months prior to the expiration of Endorsement, the endorsed entity shall submit a letter to the Executive Director, along with any required municipal authorization, petitioning the SPC to renew their Endorsement...

**7.23 (d) 1.** - New and revised language:

- i. Statement of actions taken toward addressing climate resilience planning and mitigation;
- ii. Statement of actions taken toward addressing environmental justice and social equity;

**5:85-7.25 Petitions to amend endorsed plans, previously designated centers, Planning and Implementation Agreements**

(b) 1. Revised language would permit a justification statement in place of requirement for a self-assessment report.

**5:85-8.3 Map amendments**

**5:85-8.4 Procedures** – Substantially revised language regarding amendments where petitioner is an individual or private entity, public notice, hearing process requirements.

(b) A petition to amend the State Plan Policy Map shall include at a minimum:

3. A statement describing:

- i. How the amendment promotes local, regional and State goals and objectives;
- ii. How the amendment will impact the local zoning district in which the State Plan Policy Map amendment is proposed;
- iii. How the amendment will impact infrastructure and associated capacity in the municipality in which the State Policy Map amendment is proposed;
- iv. How the amendment will impact adjacent municipalities;
- v. How the amendment will impact adjoining zoning districts of adjacent municipalities;

(f) If an individual or private entity initiates a map amendment, the appropriate municipality within which the amendment is proposed, shall hold at its discretion, either an in-person, virtual or mixed mode public hearing to receive testimony on the map amendment in accordance with the Open Public Meetings Act, N.J.S.A 10:4-6

et seq;

1. At least 10 days prior to the public hearing date, the individual or private entity initiating the map amendment, shall provide notice in accordance with 5:85-1.7(g) (“g” addresses 200-foot list requirements for all individual or private entity petitions)
2. The municipality shall provide the Executive Director with proof that notice of the hearing on the map amendment has been provided pursuant to N.J.A.C. 5:85-1.7( g) in the form of an affidavit of publication;
3. At the conclusion of the public hearing, the municipality shall consider adopting a certified resolution expressing either support or opposition to the map amendment petition;
4. Within 30 days, a copy of the resolution and meeting minutes at which the hearing on the map amendment petition was held, shall be mailed to the Executive Director. The minutes shall include a summary of public comments and copies of written comments filed before or at the public meeting; and

**8.4 (f) above** – DEP believes it’s potentially problematic to require a town to host the hearing for an individual or private entity’s proposed map amendment. OPA believes it would be more problematic to not conduct a public hearing vs. having an applicant host an informational session where procedural standards may come into question and be challenged.

DAG question: Can Rules require the petitioner to pay for costs associated with having a municipality conduct the hearing, such as professionals via posting escrow.