State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
STATE PLANNING COMMISSION
OFFICE OF SMART GROWTH
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Commissioner

BENJAMIN SPINELLI
Executive Director & Secretary

MEMORANDUM

TO: State Planning Commission

FROM: Benjamin L. Spinelli, Executive Director and Secretary

DATE: February 25, 2008

RE: **Plan Endorsement Rule Proposal Revisions**

Background – Plan Endorsement Rule Proposal
In October, the State Planning Commission authorized revisions to subchapter 7 of the State Planning Rules regarding the plan endorsement process. The Commission approved plan endorsement procedural rules for publication in the NJ Register. In addition, the commission approved guidelines which include substantive requirements for plan endorsement. The guidelines are incorporated by reference in the proposed rules through reference to the Office of Smart Growth website on which they are posted.

During legal review of the final rule proposal, three issues arose, including:

- Concern that publication of substantive rules in the form of guidelines may fail to meet Administrative Procedures Act requirements as to notice to the regulated community
- Internal inconsistencies within the rule itself and between the procedural rules, the guidelines and additional guide documents as to notice requirements, visioning process standards and submission requirements
- Vagueness as to notice requirements and submission requirements for a complete petition

Background – Expired Center Rule Proposal Revisions
In January, the Executive Director and Chairman indicated that a number of members of the regulated community had contacted them indicating that municipalities with centers expiring in January 2008 were being compelled to either lose center designation or enter a new plan endorsement process that, because it was still under development until late 2008, left them little opportunity to evaluate the time and cost involved in continuing the centers through plan endorsement. In fact, the new plan endorsement rules were initiated in response to complaints regarding the length of time and cost associated with the old plan endorsement process. Accordingly, the Commission agreed to consider a temporary extension of centers

in order to enable members of the regulated community to evaluate whether pursuit of center designation through the new plan endorsement process would be worthwhile.

A proposed rule was prepared to allow for temporary reestablishment of centers, with conditions. It gives municipalities with centers that expired in January 2008 an opportunity to temporarily reestablish an expired center for a period of one year if it initiates the plan endorsement process as soon as possible and achieves a Certificate of Eligibility within one year of the effective date of the rule. Initiating plan endorsement means attending a pre-petition meeting, appointing a Plan Endorsement Advisory Committee and submitting a Municipal Self-assessment report. The reestablished center may continue for up to an additional two years. In February, the Plan Implementation Committee considered the proposed revision to the revised rule proposal and authorized it be submitted to the Commission for consideration with one revision. Specifically, modifications to prior boundaries of expired centers will be made "in consultation with state agencies." During public comment it was noted that the one year term of extension was likely insufficient, due at least in part, to extensive public notice requirements.

Summary of Revisions made during Legal Review

Each of the concerns raised above has been addressed in the rule proposal revisions that are summarized below.

Publishing minimum substantive requirements for plan endorsement as part of the rule proposal assures the intent of the Administrative Procedures Act is met. This is not a change in the content of the approved substantive requirements but rather a rearrangement of the presentation of the information.

Revising the public notice requirements adds clarity as to when Open Public Meeting Act notice is required (public meetings) and when the more extensive 10 day notice requirement is required (public hearings). This meets the intent of the prior rule distinctions while eliminating the vagueness of prior rule language by expressly stating when the different notice requirements apply.

Conforming the rules to define "written comment" once and using that term consistently throughout, corrects the internal inconsistency regarding forms of written comments. These forms are now limited to electronic or first class mail throughout the rule.

Defining "petition" and clarifying language as to content and timing of submission of a complete petition addresses the vagueness of earlier language. The petition is the submission requirements for: the pre-petition meeting, the self-assessment report, the visioning process, the Action Plan and Memorandum of Understanding as adopted by the petitioner and any additional requirements agreed upon between petitioner and the Executive Director (such as a Plan Implementation Agreement). The consistency review is performed within 45 days of receipt by the Office of Smart Growth of a complete petition.

Revising rule language to incorporate minimum substantive requirements for visioning addresses internal inconsistencies between published guidelines and guides and clearly defines the minimum required actions needed to satisfactorily perform the visioning process. The rule will resolve any internal inconsistencies regarding variations in mandatory language relating to visioning.

Revising rule language to specify the process for reestablishing centers clarifies prior language and provides clear direction to a municipality as to what to expect if it petitions for that purpose. Language regarding extension of centers not yet expired is irrelevant and has been removed. The aforementioned clarification of public notice requirements results in there being adequate time to timely qualify for reestablishment of centers.

Additional minor revisions have been made by:

- clarifying rule language, adding definitions and revising the definition of “consistent” to move the procedure for evaluating consistency to the section on consistency review
- adding specific reference to county and special resource area petitioners in the visioning, advisory committee and self-assessment sections to provide missing procedural and substantive requirements for these petitioners
- refining section headings to better reflect process flow
- adding 30 days to the amount of time the Executive Director may extend time allowed for state actions in order to address the significant and protracted staffing shortages of the Office of Smart Growth

Attached hereto is a copy of the revised rule proposal and a table that cross-references sections of the original rule proposal to the present rule proposal.