

requirements inherent in the financial assistance process and to requirements of compliance with the terms of the loan agreement. As with any agreement, loan applicants may require legal and accounting assistance, as well as the assistance of persons performing the actual work.

Basic compliance records shall include documents that prove the assisted property continues to be used as the original loan applicant's principal residence (if the applicant applied as an owner-occupant), evidence of payment of real estate taxes, water and sewer assessments, evidence of hazard insurance and nondiscrimination in accordance with N.J.A.C. 5:48-2.6(m).

There are no capital costs of compliance. The specific costs associated with applying and receiving assistance under the LHCA Fund will vary from case to case. It is anticipated that in the majority of cases where the applicant is an owner-occupant of a one to four family dwelling who qualifies as low income, costs associated with applying for assistance and loan processing shall be nominal and/or shall be eligible costs for LHCA Funding. All other applicants may expect to incur the costs normally charged by lenders and loan processors such as: the cost of a credit report, appraisal, loan processing fees, title insurance and other title services and escrow services. It may be necessary for applicants who are self-employed, corporations, limited liability companies or partnership entities to obtain professional services in the preparation of financial reports to verify income or for debt coverage ratio analysis when any applicant is requesting assistance for work being performed upon a multi-family dwelling.

All applicants for LHCA Funds must establish the presence of lead-based paint hazards. These costs will be borne by the LHCA Fund or become part of the loan amount for owner-occupants of a one to four family dwelling who qualify as low-income.

There shall be no application or loan processing costs to applicants for ELPR Funds; however, owners of the rental housing unit from which the tenant-applicant was moved may be required to reimburse the ELPR Fund in accordance with N.J.A.C. 5:48-3.6.

Smart Growth Impact

The rules proposed for readoption would not affect "smart growth" or implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

This notice of proposal is intended to readopt rules concerning financial assistance for remediation of lead hazards in older buildings. It would be most unlikely to have any impact upon housing production costs or to affect affordability.

Smart Growth Development Impact

This notice of proposal is intended to readopt rules concerning financial assistance for remediation of lead hazards in older buildings. It would be most unlikely to have any impact upon housing production within Planning Areas 1 and 2 or within designated centers under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:48.

(a)

STATE PLANNING COMMISSION

State Planning Rules

Proposed Amendments: N.J.A.C. 5:85-1.4, 1.7 and 7

Proposed Repeal and New Rule: N.J.A.C. 5:85-7.12

Proposed Recodification with Amendments: N.J.A.C. 5:85-7.9 as 7.6

Proposed Repeal: N.J.A.C. 5:85-7 Appendix

Authorized By: State Planning Commission, Benjamin L. Spinelli,
Secretary and Principal Executive Officer.
Authority: N.J.S.A. 52:18A-203.

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

Proposal Number: PRN 2009-125.

Submit written comments by June 19, 2009 to:

Benjamin L. Spinelli, Esq., Secretary and Principal Executive Officer
State Planning Commission
New Jersey Department of Community Affairs
101 South Broad Street
P.O. Box 204
Trenton, New Jersey 08625-0204
E-mail: osg@mail@dca.state.nj.us
Fax: 609-292-3292

All comments should be identified by the applicable N.J.A.C. citation and comments related to the summary description of a particular rule section should be included with comments on that section.

Please use the following format to the extent possible: (tab) citation (tab) Comment: (two spaces) organization name or individual name, followed immediately with the phrase "believes that" and comment text.

For example, "5:85-1.4 Comment: ABC organization believes that the definition of 'center' should be amended as follows." This format will enable the Commission to sort comments electronically.

The State Planning Commission requests that comments be submitted: (1) electronically by e-mail at osg@mail@dca.state.nj.us or on a compact disk (CD); and (2) in hard-copy letter format via U.S. postal service or facsimile at: (609) 292-3292. The State Planning Commission does not accept comments by phone.

The agency proposal follows:

Summary

The Commission is submitting this concurrent proposal to amend the State Planning Rules at N.J.A.C. 5:85-1.4, 1.7 and 5:85-7, adopted elsewhere in this issue of the New Jersey Register (Concurrent Adoption). The notice of proposal includes amendments to provisions: N.J.A.C. 5:85-1.4 relating to definitions and N.J.A.C. 5:85-1.7 relating to public notice and N.J.A.C. 5:85-7 relating to plan endorsement, either in response to comments or upon Commission deliberations and discussed in more detail below. The State Planning Commission has provided for a 60-day public comment period on this notice of proposal; therefore, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

N.J.A.C. 5:85-1.4 Definitions

The Commission is proposing to amend the definition of "critical environmental site" to clarify the size of the site as reflected in the definition contained in the current 2001 State Plan.

The Commission is proposing to delete reference to "special resource area plan" as it is not used in this chapter.

The Commission is also proposing to reinstate the definition of "urban complex" as it is still in use in this chapter.

N.J.A.C. 5:85-1.7 Public Notice Requirements, Form, Content and Timing

The Commission is proposing to add new N.J.A.C. 5:85-1.7(f)3 to specify notice requirements for visioning workshops as distinct from notice for meetings subject to the Open Public Meetings Act or hearings held according to the Municipal Land Use Law.

The Commission is proposing to amend the public notice requirements at N.J.A.C. 5:85-1.7(f)4ii to specify an additional entity that must receive notice as it pertains to county, regional and special resource area petitioners.

The Commission is proposing to amend N.J.A.C. 5:85-1.7(j) to add that the written notice for hearings must also state that formal action may be taken. This amendment reflects requirements of Open Public Meeting Act as the hearings need to conform to these notice requirements as well.

N.J.A.C. 5:85-7 Global Amendments

The Commission is proposing to amend the rule to recodify the waiver provision at N.J.A.C. 5:85-7.9 before individual steps of plan endorsement, as new N.J.A.C. 5:85-7.6, to improve clarity. Cross-references have been updated globally to reflect the new codification.

N.J.A.C. 5:85-7.6, 7.7 and 7.8 will be recodified accordingly and the remainder of the Summary below will discuss the rules as recodified.

The Commission is proposing to amend N.J.A.C. 5:85-7.9(d)1, 7.11(d)1, 7.15(a)3i and 7.24(b)4 to reflect that an affidavit of publication is required as proof of satisfying publication requirements.

N.J.A.C. 5:85-7.2 Purpose and Scope

The Commission is proposing to amend N.J.A.C. 5:85-7.2(a) to delete the incorporation by reference of the Subchapter 7 Appendix as it is being repealed.

The Commission is proposing to amend N.J.A.C. 5:85-7.2(a) and (d) to replace an erroneous website address for the Office of Smart Growth with the correct website address.

N.J.A.C. 5:85-7.3 Applicability

The Commission, in response to Comment 7 of the Concurrent Adoption, is proposing to amend N.J.A.C. 5:85-7.3, to specify that, the rule is applicable to two types of regional plans. The rule applies to regional plans from petitioners seeking regional plan endorsement that are not seeking any map change requests (that is, center designations). The rule also applies to regional plans for municipal petitioners seeking to obtain map changes (that is, regional center designations), in which case, each such municipal petitioners seeking regional plan endorsement must individually establish a plan endorsement advisory committee.

N.J.A.C. 5:85-7.4 Posting and Register Publication Requirements for the Office of Smart Growth

The Commission is proposing to amend N.J.A.C. 5:85-7.4(b) to remove reference to a decision to temporarily reestablish a center because it would only have applied to municipalities having designated centers due to expire in 2008 that were actively seeking plan endorsement pursuant to the new rules. In its place is an amendment to N.J.A.C. 5:85-7.14(b), which allows for creation of interim centers as part of a negotiated action plan regardless of the status of a petitioner either having previously designated centers or having a center designated for the first time as part of the new plan endorsement process.

N.J.A.C. 5:85-7.5 State Agency Responsibilities

The Commission is proposing to amend N.J.A.C. 5:85-7.5(b)2 to specify that actions that must be taken by petitioner to qualify for benefits may be delineated in the planning and implementation agreement, as well as the action plan.

The Commission is proposing to amend N.J.A.C. 5:85-7.5(d)4 to correct a typographical error by replacing "planning implementation agreement" with "planning and implementation agreement."

The Commission is proposing to amend N.J.A.C. 5:85-7.5(e) to replace an erroneous website address for the Office of Smart Growth with the correct website address.

N.J.A.C. 5:85-7.6 Waivers

The Commission is proposing to amend N.J.A.C. 5:85-7.6(a) to clarify that each of the requirements of plan endorsement may be waived in full or in part.

The Commission is proposing to amend N.J.A.C. 5:85-7.6(b) to add language that clarifies it is qualifying N.J.A.C. 5:85-7.6(a) and not the entire section on waivers.

The Commission is proposing to amend N.J.A.C. 5:85-7.6(d) to revise the number of days after receipt of a request for a waiver before a petitioner receives a written determination from 15 to 30 days.

The Commission is proposing to amend N.J.A.C. 5:85-7.6(f) to update cross-references and clarify the Executive Director's recommendation is made in consultation with relevant State agencies.

N.J.A.C. 5:85-7.7 Pre-petition Submission Requirements, Scheduling and Meeting

The Commission is proposing to amend N.J.A.C. 5:85-7.7(a) to specify that the petitioner is a municipality and to incorporate language from N.J.A.C. 5:85-7.7(a)2 into the introductory statement.

The Commission is proposing to amend N.J.A.C. 5:85-7.7(a)1 to specify that the source of the pre-petition letter from a municipal petitioner is the mayor.

The Commission is proposing new N.J.A.C. 5:85-7.7(a)2 to specify that the documents to be provided at the pre-petition stage are those that are delineated in N.J.A.C. 5:85-7.13(d), to the extent that they currently exist.

The Commission is proposing to amend N.J.A.C. 5:85-7.7(c) to specify that the representatives from a municipal petitioner that attend a pre-petition meeting must include at least one elected official.

The Commission is proposing to amend N.J.A.C. 5:85-7.7(d) to indicate that the step that must be taken by petitioner in order to avoid its petition from being withdrawn without prejudice after one year is to submit a self-assessment report.

N.J.A.C. 5:85-7.8 Advisory Committee Appointment and Membership

The Commission is proposing to amend N.J.A.C. 5:85-7.8(a)1, 2 and 3 to correct language by referring to the type of petitioner rather than to the type of plan.

The Commission is proposing to further amend N.J.A.C. 5:85-7.8(a)1 to explain that the mayor is considered a member of the governing body for the purpose of selecting members of the advisory committee and therefore may be selected to serve on it.

The Commission is proposing to further amend N.J.A.C. 5:85-7.8(a)3 to define the membership of the special resource advisory committee; to correct terminology by replacing "regional planning entity" with "relevant planning entity" and to correct terminology by replacing the word "region" with "area."

N.J.A.C. 5:85-7.9 Self-Assessment Report, Form, Content, Adoption and Submission Requirements

The Commission is proposing to amend N.J.A.C. 5:85-7.9(a) to specify that the section relates to municipal Self Assessment Reports.

The Commission is proposing to amend N.J.A.C. 5:85-7.9(a)3 to delete a redundant reference to planning documents to be submitted, to specify planning document submissions relevant to map change requests, including planning areas and centers as reflected in the guidelines and to relocate language regarding additional submissions not relating to map changes to a newly added paragraph (a)9.

The Commission is proposing to replace N.J.A.C. 5:85-7.9(a)6 to remove a redundant requirement and incorporate a submission requirement as delineated in the guidelines, namely a list of benefits petitioner seeks as a result of plan endorsement.

N.J.A.C. 5:85-7.10 State Agency Opportunities and Constraints Assessment and Report

The Commission is proposing to amend N.J.A.C. 5:85-7.10(b) and (c) to correct a typographical error by replacing "Opportunities and Constraints Assessment Report" with "Opportunities and Constraints Report."

N.J.A.C. 5:85-7.11 Community Visioning Process, Vision Statement

The Commission is proposing to amend N.J.A.C. 5:85-7.11(a) to require notice of the workshops be given to the Office of Smart Growth.

The Commission is proposing to amend N.J.A.C. 5:85-7.11(a)1 to reflect a correction to the number and type of workshops required. The Commission is also proposing to amend N.J.A.C. 5:85-7.11(a)1 to rephrase visioning requirements to improve clarity regarding the purpose of visioning events. In addition, the Commission is proposing to amend N.J.A.C. 5:85-7.11(a)1 to refer to the notice requirement for workshops at N.J.A.C. 5:85-1.7(f).

The Commission is proposing to amend N.J.A.C. 5:85-7.11(a)2 to specify the order and intention of visioning events.

The Commission is proposing to amend N.J.A.C. 5:85-7.11(d)2 to expressly state that the resolution addresses approving submission of the vision statement to the Office of Smart Growth.

The Commission is proposing to amend N.J.A.C. 5:85-7.11(d)4 to correct a typographical error by replacing "summary" with "summary report."

The Commission is proposing to add N.J.A.C. 5:85-7.11(d)6 to state that a copy of the vision statement must be submitted.

N.J.A.C. 5:85-7.12 Complete Petition for Plan Endorsement

The Commission is proposing to repeal and replace N.J.A.C. 5:85-7.12 to reorganize the section and describes the changes below from the existing rule.

The Commission is proposing to amend the heading to "Commencement of consistency review" as the term "Complete petition" for plan endorsement is disfavored.

The Commission is proposing to add language to new N.J.A.C. 5:85-7.12 to clarify and consolidate the requirements for commencement of a consistency review by including submission requirements from former paragraphs (a)1 through 5 and posting requirements from former subsection (b).

The Commission is proposing to delete language from N.J.A.C. 5:85-7.12 regarding examples of planning documents that may be required for a consistent petition for municipal, county and special resource area plan endorsement. Instead, the Commission is specifying standards for evaluating a consistent municipal plan at N.J.A.C. 5:85-7.13(d) and specifying the planning documents that must be submitted unless waived.

N.J.A.C. 5:85-7.13 Consistency Review

The Commission is proposing to amend N.J.A.C. 5:85-7.13(a) to delete reference to the term "complete petition" and instead require submission of items pursuant to N.J.A.C. 5:85-7.5(d)3, 7.7, 7.8, 7.9 and 7.11(d) and also to eliminate the additional time allotment to State agencies for review of petitions reestablishing centers.

The Commission is proposing to amend N.J.A.C. 5:85-7.13(b) to delete reference to the term "complete petition" and instead require submission of items pursuant to N.J.A.C. 5:85-7.12 and also to eliminate the additional time allotment to State agencies for review of petitions reestablishing centers.

The Commission is proposing to delete the first sentence of N.J.A.C. 5:85-7.13(c) to delete reference to conditional and additional agreed upon requirements of plan endorsement, as this material is in N.J.A.C. 5:85-7.12(d)3 and (d)3vii.

The Commissioner is proposing to delete N.J.A.C. 5:85-7.13(d) as it is erroneous and replacing it with a new subsection (d), which states the requirements for municipal petitioners by incorporating the minimum mandatory requirements and conditional requirements and adding language from the first sentence that was deleted from subsection (c) regarding any additional requirements agreed upon between petitioner and the Office of Smart Growth.

The Commission is proposing to add N.J.A.C. 5:85-7.13(d)3viii to add a sustainability element as a conditional requirement.

N.J.A.C. 5:85-7.14 Finding of Consistency and Recommendation Report

The Commission is proposing to amend N.J.A.C. 5:85-7.14(a) to update cross references, to remove reference to a "complete" petition, to revise the time periods for performing a consistency review from 45 to 60 days and to clarify the review period for preparing the recommendation report begins at the conclusion of the consistency review period.

N.J.A.C. 5:85-7.15 Action Plan and Memorandum of Understanding Adoption, Submission and Completion

The Commission is proposing to amend N.J.A.C. 5:85-7.15(a) to correct a typographical error by replacing "regional planning entity" with "relevant planning entity" and to add an omitted reference to a county plan.

The Commission is proposing to amend N.J.A.C. 5:85-7.15(a)3iii to clarify the contents of the minutes are to include a summary of the comments made at the meetings and hearings.

The Commission is proposing to amend N.J.A.C. 5:85-7.15(b) to maintain internal consistency by adding a determination of the Executive Director regarding a petition will be made in consultation with relevant State agencies.

The Commission is proposing to add N.J.A.C. 5:85-7.15(d) to indicate the duration of designated interim centers and the conditions under which they may be revoked or the boundaries thereof may be amended.

N.J.A.C. 5:85-7.16 Certificate of Eligibility

The Commission is proposing to amend N.J.A.C. 5:85-7.16(a) to remove reference to development of a transfer of development rights program as an option.

The Commission is proposing to amend N.J.A.C. 5:85-7.16(a)1 to update cross-references and remove the term "complete" in relation to petitions as the term is no longer used and is disfavored.

The Commission is proposing to amend N.J.A.C. 5:85-7.16(a)2 to update cross-references.

N.J.A.C. 5:85-7.17 Draft Planning and Implementation Agreement

The Commission is proposing to amend N.J.A.C. 5:85-7.17(a) to rephrase to improve clarity.

N.J.A.C. 5:85-7.18 Recommendation Report, Review of Petition and Direct Petition

The Commission is proposing to amend N.J.A.C. 5:85-7.18(a) to revise the time by which the recommendation report is to be prepared from 45 to 60 days, to delete reference to a "complete petition" as that term is not longer used and to delete the last sentence as it is unnecessary.

The Commission is proposing to amend N.J.A.C. 5:85-7.18(b) to correct a typographical error by replacing "report" with "recommendation report."

N.J.A.C. 5:85-7.19 Plan Endorsement by State Planning Commission

The Commission is proposing to amend N.J.A.C. 5:85-7.19(a) to rephrase to improve clarity and to delete reference to N.J.A.C. 5:85-7.18, as it is redundant.

N.J.A.C. 5:85-7.20 Extension of Time Requirements

The Commission is proposing to amend N.J.A.C. 5:85-7.20(b) to reflect a shorter turn around time by the Executive Director from 60 to 30 days to reflect current practice.

The Commission is proposing to amend N.J.A.C. 5:85-7.20(c) to update a cross-reference.

The Commission is proposing to delete N.J.A.C. 5:85-7.20(d), as it refers to a prior plan endorsement procedure that is no longer being offered.

N.J.A.C. 5:85-7.21 Period of Endorsement

The Commission is proposing to amend N.J.A.C. 5:85-7.21(b) to clarify language regarding the equivalence between Pinelands Commission growth areas and centers and State Plan growth areas and designated centers for the purposes of qualifying Pinelands certified municipalities for benefits associated with plan endorsement.

The Commission is proposing to amend N.J.A.C. 5:85-7.21(e) to remove reference to cores and nodes and return to the language contained in the 2004 version of the rule, which was the correct language.

The Commission is proposing to delete N.J.A.C. 5:85-7.21(f) and (g) to remove reference to a decision to temporarily reestablish a center because it would only have applied to municipalities having designated centers due to expire in 2008 that were actively seeking plan endorsement pursuant to the new rules. In its place is an amendment to N.J.A.C. 5:85-7.14(b), which allows for creation of interim centers as part of a negotiated action plan regardless of the status of a petitioner either having previously designated centers or having a center designated for the first time as part of the new plan endorsement process.

N.J.A.C. 5:85-7.22 Monitoring of Endorsed Plans and Designated Centers

The Commission is proposing to amend N.J.A.C. 5:85-7.22(b)1 to correct language regarding the frequency and type of monitoring reports.

The Commission is proposing to amend N.J.A.C. 5:85-7.22(d) to update cross-references and delete redundant language and to add reference to a Planning Implementation Agenda, which may have been prepared in connection with a prior plan endorsement process connected with designation of a center.

The Commission is proposing to delete language at N.J.A.C. 5:85-7.22(b)2 to eliminate the requirement that adds an additional reporting requirement that a petitioner review updated State Plans and submit, in an annual report, a description of how the endorsed plan is either consistent

with an updated State Plan or of changes to be made to be consistent. Since the statutory goals of the State Planning Act remain the same, inconsistencies between earlier and later versions of the plan are not anticipated to necessitate a change in endorsed plans. The State Plan is updated periodically but the updates to date have not been inconsistent with prior versions. The language is honed to better reflect current conditions and more modern approaches to meet the goals of the State Planning Act. Additionally, the Commission believes its staff is better able to identify any policy shifts in updates to the State Plan that might necessitate a revision to plan endorsement than a petitioner. Accordingly, as a matter of policy, the Commission through its staff will alert any petitioners that might need to adjust any planning implementation agreements to remain consistent with updated State Plans. As a matter of policy, the Commission believes it is important for there to be some confidence by petitioners in the fixed nature of plan endorsement so that the investment of public funds made in satisfying the requirements is protected.

N.J.A.C. 5:85-7.23 Revocation of Plan Endorsement or Prior Center Designation

The Commission is proposing to amend N.J.A.C. 5:85-7.23(b) and (c) to correct two instances of the time for Executive Director action, from 60 to 45 days and from 30 to 45 days, respectively. The Commission is proposing to add further language at subsection (c) to require that the Executive Director post notice of a decision to revoke plan endorsement or prior center designation in accord with N.J.A.C. 5:85-7.4.

N.J.A.C. 5:85-7.24 Petitions to Amend Endorsed Plans, Previously Designated Centers, Planning and Implementation Agreements

The Commission is proposing to amend N.J.A.C. 5:85-7.24(a) and (b) to correct reference to biennial as opposed to annual monitoring reports.

The Commission is proposing to amend N.J.A.C. 5:85-7.24(b)5 to correct errors regarding entities that may submit petitions to amend to indicate the governing body submits on behalf of municipal petitioners and the relevant planning entity submits on behalf of county, regional and special resource area petitioners.

The Commission is proposing to amend N.J.A.C. 5:85-7.24(b)10iv to correct the type of report from "annual" to "biennial."

The Commission is proposing to amend N.J.A.C. 5:85-7.24(l) to correct the number of days after receipt of a recommendation report on a petition to amend before a hearing is conducted from 60 to 45 days to retain internal consistency.

The Commission is proposing to amend N.J.A.C. 5:85-7.24(m) to correct a cross-reference.

The Commission is proposing to amend N.J.A.C. 5:85-7.24(e), (g) and (j) to correct cross-reference to notice requirements.

The Commission is proposing to repeal N.J.A.C. 5:85-7 Appendix as its use has been deleted from the rule.

Social Impact

The proposed amendments are technical in nature and are not expected to have a social impact that differs in any significant way from the rules as are being adopted concurrently. In particular, the amendments, including addition of a visioning session and some additional notice requirements, as well as the creation of interim centers, are expected to improve public involvement in and understanding of local land use planning. These amendments provide for enhanced public involvement and accordingly are expected to have a positive social impact because they provide a greater opportunity for members of the public to be involved in the planning process. All residents of the State are expected to benefit whenever a local municipality pursues plan endorsement under these rules. The process serves to educate the public about planning in a way that fosters understanding and promotes active involvement in the planning process. Engaging in the State Planning Commission's comprehensive plan endorsement process, facilitates implementation of the State Plan, which if fully implemented would result in directing development and redevelopment into compact areas suitable for growth while assuring natural resource protection and conservation measures are implemented in the environs. Directing development into these compact areas reduces sprawl, eases traffic congestion, saves the State's large

contiguous areas of open space, reduces energy consumption, improves air and water quality, creates cost savings across a wide range of factors and enhances a sense of place. Compact communities offer easy access to public services and facilities and preferably mass transit and promote walking, bicycling and other active recreation through well-planned, resource-efficient and beneficial growth and development patterns. In addition, implementing the State Plan will result in significant reductions in green house gases, which is an important social impact because, if these man-made emissions are not controlled, serious public health and safety problems are likely to arise including, but not limited to, coastal flooding, drought, drinking water shortages and irreversible environmental resource damages. Implementation of the State Plan through the plan endorsement process is expected to help avoid the most damaging impacts of green house gas emissions.

Economic Impact

The proposed rule amendments are technical in nature and are not expected to add in any significant way to the fiscal impact on municipalities that choose to participate in the plan endorsement process. The addition of a visioning session and some additional notice requirements may add some initial expense to the process. However, the benefits to the community of enhanced participation in the planning process are expected to more than offset any increase in costs in both tangible and intangible ways. As with the Concurrent Adoption, it is anticipated that the effort to participate in plan endorsement generally, which involves updating land use plans and directing growth into compact centers is expected to result in long-term Statewide cost-savings. Plan endorsement serves as the primary mechanism for assuring local consistency with the State Development and Redevelopment Plan. Accordingly, fiscal benefits will be shared by all, from the municipality benefiting from better planned communities, to enabling more efficient infrastructure investment decisions to be made, to making the State a better place for private sector investment. According to the Rutgers/CUPR study assessing implementation of the State Plan policies, municipalities could save as much as \$2.3 billion in capital costs for local road and sewer infrastructure over the next 20 years and as much as \$160 million per year in reduced fiscal deficits Statewide.

Federal Standards Statement

No Federal standards analysis is required because the State Planning Rules are authorized by the State Planning Act, N.J.S.A. 52:18A-203 and are not subject to any Federal requirements or standards.

Jobs Impact

The State Planning Rules establish procedures for the voluntary participation of governmental agencies and the public in review of petitions for plan endorsement, the implementation of the State Development and Redevelopment Plan (State Plan) and amendments thereto. The proposed amendments are anticipated to foster growth and economic development throughout the State in beneficial development patterns. Implementation of the plan endorsement process is expected to result in redirecting private investment into designated centers and especially into redevelopment of urban centers, cores and nodes resulting in revitalization of these areas. According to the Impact Assessment of the State Plan prepared by Rutgers University, center for Urban Policy Research in September 2000 (page 21), if the State Plan is fully implemented as intended "jobs will be created in all locations of the State, but especially in locations with the highest rate of unemployment."

Agriculture Industry Impact

The proposed amendments are expected to have a positive impact on the agriculture industry in that the amendments allow for relevant governmental entities to plan for farmland preservation and agricultural industry retention. According to the impact assessment of the State Plan performed by Rutgers University, "the [State] Plan scenario will save more than 50 percent of the agricultural lands that otherwise would be lost [under trend]."

Regulatory Flexibility Statement

The plan endorsement process set forth in the proposed amendments is to be utilized by petitioners that are governmental entities and not private

entities. As such, the rules are not expected to impose reporting, recordkeeping or other requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the compact, mixed use development pattern that is favored by the State Plan is expected to help small businesses. Many downtown commercial centers, primarily occupied by small business merchants, have been in decline and have suffered from competition by "big box" shopping malls that are emblematic of a less favored development pattern. One anticipated advantage to small businesses of the rules, is that petitioners engaging in the process and achieving plan endorsement, will alter their development patterns in such a way as to revitalize areas of existing development, such as commercial downtowns, through planned development there.

Smart Growth Impact

Implementation of the State Plan and sound planning principles through the plan endorsement process as set forth in the State Planning Rules are expected to have a positive impact on the achievement of smart growth throughout the State. According to the State Planning Act, New Jersey needs integrated and coordinated planning in order to conserve its natural resources, to revitalize its urban centers, to provide affordable housing and adequate public facilities at a reasonable cost, to promote equal social and economic opportunity for New Jersey's citizens and to prevent sprawl and promote smart growth through the suitable use of land.

The State Planning Act anticipates that participation in procedures developed by the Office of State Planning, predecessor to the Office of Smart Growth, will if implemented and used, result in municipal and county master plans and State agency functional Master Plans being drawn to be consistent with the State Plan. Administrative rules, codes, ordinances, regulations and other devices designed to implement master plans and functional plans should then be drawn or revised to be consistent with the State Plan and master plans or functional plans of the governing bodies or agencies promulgating such rules, codes ordinances, regulations and the like. In order to accommodate these review and revision processes, the State Planning Commission has proposed these rules and amendments, providing for the Commission to endorse plans consistent with smart growth principles and the State Plan.

Housing Affordability Impact Statement

Implementation of the State Plan through the plan endorsement process as set forth in the State Planning Rules is expected to have a positive impact on the availability of affordable housing units throughout the State. A plan cannot be endorsed unless the petitioner first adopts a Housing Element and Fair Share Plan to address Council of Affordable Housing (COAH) obligations. Endorsement is contingent upon satisfactorily achieving either substantive certification from COAH or compliance with court-ordered housing settlement.

Smart Growth Development Impact

Implementation of the State Plan through the plan endorsement process as set forth in the State Planning Rules is expected to have a significant positive impact on the provision of the number and types of housing. It is not possible to anticipate the number of municipalities that will seek and obtain plan endorsement. Accordingly, it is not possible to estimate the number of housing units to which the proposed rules will apply.

The proposed amendment will impact the types of housing that will be provided by discouraging sprawl development patterns that produce only single-family homes that are primarily for sale and not affordable and instead encouraging denser, mixed-use development in centers while providing enhanced environmental protection to the environs. This development pattern is expected to increase the provision of multi-family housing, affordable units, as well as rental units, that are conveniently located near amenities such as mass transit and mixed-use downtowns.

Impacts to Planning Areas 1 and 2 are expected to be minimal because the availability of funding for Board of Public Utilities to developers for utility extensions is available to all developments within these planning areas even if plan endorsement is not obtained. Other benefits associated with plan endorsement, including more competitive access to State grant funding and the like, does not specifically impact any particular

development project. Accordingly, these rules have a de minimus impact on development opportunities in these growth areas. Further, the rules are expected to promote new construction of additional affordable housing units in newly designated centers.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:85-7.12 and 5:85-7 Appendix.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

5:85-1.4 Definitions

The following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

... "Critical environmental site" (CES) means an area generally **greater than two acres and less than a square mile** depicted on the State Plan Policy Map, which includes one or more critical environmentally sensitive features located either outside of a planning area classified as environmentally sensitive by the State Development and Redevelopment Plan or within designated centers located within such planning areas.

... ["Special Resource Area Plan" means a plan for a special resource area that is developed for the purpose of protecting and preserving the integrity of a special resource area of Statewide significance.]

... "Urban complex" means an Urban Center and two or more municipalities within the surrounding Metropolitan Planning Area that exhibit a strong inter-municipal relationship, based on socio-economic factors and public facilities and services, that is defined, integrated and coordinated through a Strategic Revitalization Plan. Urban complexes are nominated jointly by a county or counties and the affected municipalities and are coterminous with municipal boundaries but not necessarily with county boundaries.

5:85-1.7 Public notice requirements, form, content and timing

(a)-(c) (No change.)

(d) Public notice requirements for a municipality or county pursuant to N.J.A.C. 5:85-3 and 4 are as follows:

1.-2. (No change.)

3. In addition, all public notice of meetings or hearings shall be further provided as follows:

i.-iv. (No change.)

v. Municipalities shall provide written notice to the municipal clerk to disseminate to the municipal planning board, board of education, environmental commission, if any, and each authority, board, commission, committee[,] and department involved in economic development, land use, infrastructure or resource protection in that municipalities; and

vi. Counties shall provide written notice to the county clerk to disseminate to the county planning board and each authority, board, commission, and department involved in economic development, land use, infrastructure or resource protection in that county; and vii. To] and to the mayor, governing body, clerk and planning board of each municipality in that county.

(e) (No change.)

(f) Public notice requirements for a petitioner for a plan endorsement pursuant to N.J.A.C. 5:85-7 are as follows:

1. All meetings shall satisfy notice requirements of the Open Public Meeting Act, N.J.S.A. 10:4-6 et seq.;

2. All hearings shall satisfy timing and content requirements as provided for in (j) below[.];

3. All visioning workshops conducted pursuant to N.J.A.C. 5:85-7.11 shall be noticed at least 10 days in advance using the methods described in N.J.A.C. 5:85-7.11(a);

[3.] 4. (No change in text.)

[4.] 5. Additional public notice to local governmental entities and neighboring municipalities or counties shall be performed as follows:

i. (No change.)

ii. For county, regional and special resource area petitioners, by written notice to the board of chosen freeholders, county executive or administrator, if any, [county clerk] and county planning board and to the county clerk of any county that adjoins the county, region or special resource area for dissemination to the mayor, governing body and each authority, board, commission[,] and department involved in economic development, land use, infrastructure or resource protection in that county[, region or special area for which plan endorsement is being sought and to the county clerk for dissemination to the mayor, governing body and planning board in]; and

[5.] 6. (No change in text.)

(g)-(i) (No change.)

(j) All public notice of hearings provided pursuant to (b) and (d) through (g) above shall be provided at least 10 days in advance of the hearings and shall provide the time, date, location, and purpose of the hearing. The public notice shall also specify that **formal action may be taken** and the public can comment orally at the hearing or submit written comments within a specified time period.

SUBCHAPTER 7. PLAN ENDORSEMENT

5:85-7.2 Purpose and scope

(a) The purpose of this subchapter is to delineate procedural and substantive requirements of plan endorsement, including minimum submission requirements petitioner must meet in order to achieve plan endorsement and qualify for associated benefits; responsibilities of relevant State agencies in participating in plan endorsement; and responsibilities of the Office of Smart Growth in administering the plan endorsement process. [A flow chart of the plan endorsement process is appended hereto at subchapter Appendix incorporated herein by reference.] The Office of Smart Growth shall prepare Guidelines for petitioners seeking to pursue plan endorsement. The Guidelines shall be posted on the Office of Smart Growth website at: <http://www.nj.gov/dca/osg> <http://www.njsmartgrowth.com> and shall be periodically updated.

(b)-(c) (No change.)

(d) State agencies shall provide State agency benefits upon an approval of plan endorsement as described in the document entitled "Plan Endorsement Benefits" and posted on the Office of Smart Growth website at: <http://www.nj.gov/dca/osg> <http://www.njsmartgrowth.com>. Additional State agency benefits, as appropriate and feasible, shall be added to said document as they become available.

(e) (No change.)

5:85-7.3 Applicability

(a) Plans to which this subchapter applies and that may be considered for plan endorsement are:

1.-2. (No change.)

3. Regional plans for any region planning entity regarding a regional planning theme not associated with an intention to amend the State Plan Policy Map.

[3.] **4. Regional plans for two or more municipalities sharing a common [resource or] regional planning theme [submitted jointly by the affected municipal governing bodies and pursuant to this subchapter,] relating to an intention to amend the State Planning Policy Map, provided that each affected municipality [submit master plans and supporting plan implementation mechanisms] petition for plan endorsement.** Municipalities within regions that submit regional plans shall only qualify for State agency benefits associated with plan endorsement upon receiving plan endorsement of said municipality. Regional and municipal plan endorsement may be pursued concurrently;

Recodify existing 4.-6. as 5.-7. (No change in text.)

(b) (No change.)

5:85-7.4 Posting and New Jersey Register publication requirements for the Office of Smart Growth

(a) (No change.)

(b) Within 45 day of a State Planning Commission decision on a petition for plan endorsement pursuant to N.J.A.C. 5:85-7.19, [a decision on a temporarily reestablished center pursuant to N.J.A.C. 5:85-7.21,] a decision on revocation of a plan endorsement or of a previously

designated center pursuant to N.J.A.C. 5:85-7.23 or a petition to amend pursuant to N.J.A.C. 5:85-7.24, the Office of Smart Growth shall publish notice of the decision in the New Jersey Register.

5:85-7.5 State agency responsibilities

(a) (No change.)

(b) 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 a list of State agency benefits available for endorsed plans that shall be designed to encourage participation in plan endorsement, promote implementation of an endorsed plan and promote the policies and goals of the State Development and Redevelopment Plan. These benefits shall be made available only in an area that is the subject of a petition for plan endorsement, provided that the plan has been endorsed by the State Planning Commission. Each list of benefits, funding grants or other programs shall specify:

1. (No change.)

2. The information that must be included in the petition, the actions that must be taken by petitioner as delineated in an action plan **or planning and implementation agreement** in order for each such benefit to be made available; and

3. (No change.)

(c) (No change.)

(d) Each State agency member of the Commission, and any other relevant State agency or authority, at the request of the Commission or the Executive Director, shall share the following responsibilities:

1.-3. (No change.)

4. Make reasonable recommendations to the petitioner and the Commission concerning requirements for a petitioner to receive plan endorsement and how to adequately implement the plan, once endorsed, by developing reasonable and appropriate planning implementation strategies for inclusion in a planning and implementation agreement to achieve consistency with the goals, policies and strategies of the State Plan; and

5. (No change.)

(e) The Office of Smart Growth has prepared a list of available State agency benefits entitled "Plan Endorsement Benefits," which was approved by the State Planning Commission on October 17, 2007 and is presently posted on the Office of Smart Growth website at: <http://www.nj.gov/dca/osg> <http://www.njsmartgrowth.com>. The Office of Smart Growth shall, on an ongoing basis, compile and maintain an updated list of all State agency benefits and requirements and make the list available to prospective petitioners and post the updated list on the Office of Smart Growth website.

5:85-[7.9]7.6 Waivers

(a) Any of the requirements of plan endorsement, pursuant to N.J.A.C. 5:85-[7.7,] 7.8, 7.9 and 7.11 may be **partially or fully** waived at the discretion of the Executive Director in consultation with the relevant State agencies.

(b) A waiver may be granted **pursuant to (a) above**, provided the Executive Director determines that a petitioner has previously satisfactorily completed the requirement, or has substantially complied with the intent of the requirement. The determination will be based on a consideration of whether standards for plan endorsement as delineated in this subchapter and, if appropriate, whether additional relevant requirements based on guidance provided by the Office of Smart Growth in plan endorsement guidelines and related guidance documents and as agreed upon between the Office of Smart Growth and petitioner, have been met.

(c) (No change.)

(d) Within [15] 30 days of receipt of a request for a waiver pursuant to (c) above, the Executive Director shall determine whether the waiver is justified and notify the petitioner in writing of such determination.

(e) (No change.)

(f) Any of the requirements of plan endorsement, other than N.J.A.C. 5:85-[7.7,] 7.8, 7.9 and 7.11 may be waived at the discretion of the State Planning Commission, based on a written request by petitioner and a written recommendation [of] by the Executive Director [and] in **consultation with** any relevant State agencies. The recommendation shall

be based on a determination of whether intended comprehensive planning goals have been achieved using alternative implementation mechanisms or whether a requirement of plan endorsement is determined to be inappropriate or unnecessary to achieve intended comprehensive planning goals, based on a petitioner's unique circumstances.

5:85-[7.6]7.7 Pre-petition submission requirements, scheduling and meeting

(a) A prospective **municipal** petitioner may request a meeting with the Office of Smart Growth when considering whether to petition for plan endorsement and is required to make the request in writing in order to initiate plan endorsement. Submission requirements for the request include **one electronic and one hard color copy of the following:**

1. A cover letter from the mayor to the Office of Smart Growth requesting a pre-petition meeting and stating the goals and intent of the prospective petitioner in seeking plan endorsement;

[2. A hard copy in color and a digital copy of existing planning documents; and]

2. All planning documents, as delineated in N.J.A.C. 5:85-7.13(d), to the extent that they already exist; and

3. (No change.)

(b) (No change.)

(c) The Office of Smart Growth, members of relevant State agencies, and representatives for the petitioner, **including at least one elected official**, shall attend a pre-petition meeting to discuss the plan endorsement process, goals and intent of a prospective petitioner in seeking plan endorsement, and the preliminary findings of State agency review of submitted planning documents.

(d) A petitioner shall [begin to satisfy the requirements of plan endorsement] **submit its Self-Assessment Report** within one year of a pre-petition meeting or the petition shall be considered to be withdrawn without prejudice and petitioner shall be informed in writing of the status of the petition.

5:85-[7.7]7.8 Advisory committee appointment and membership

(a) Petitioner shall appoint an advisory committee to guide the plan endorsement process, serve as liaison with the State, county, regional agencies and locals officials throughout the process and increase public awareness of and participation in the plan endorsement process. Appointments shall be made in accord with any relevant local government ethics law and be designed to avoid any appearance of impropriety.

1. For a municipal [plan] **petitioner** or a neighborhood [plan] **petitioner**, the advisory committee shall be appointed by the mayor with the advice and consent of the governing body, at a public meeting for which adequate notice has been provided. The appointment shall take effect by approval of a resolution of the governing body. The advisory committee shall consist of between five and 10 people including at least one representative of the governing body, **of which the mayor is considered a member, for this purpose**, at least one Class IV member of the planning board, at least one member of another local board, commission or committee, and at least two representatives of the public who reside within the jurisdiction of the petitioner and are not elected or appointed to any public position within said jurisdiction.

2. For a county [plan] **petitioner**, the advisory committee shall be appointed by the board of chosen freeholders at a public meeting for which adequate notice has been provided and the appointment shall take effect by approval of a resolution of the board of chosen freeholders. The advisory committee shall consist of between five and 10 people including at least one representative of the board of chosen freeholders; at least one member of the county planning board, at least one member of another countywide board, commission or committee, and at least two representatives of the public who reside within the jurisdiction of the petitioner and are not elected or appointed to any public position within said jurisdiction.

3. For a special resource area [plan] **petitioner**, the advisory committee shall be appointed by the [regional] **relevant** planning entity or by the governing body of each affected municipality, depending on the nature of the [plan] **area**, at a public meeting for which adequate notice has been provided. The appointment shall take effect upon approval of a resolution of the [regional] **relevant** planning entity. The advisory

committee shall consist of between five and 10 [people] **members**, including at least one [representative] **member** of [the regional] **a** relevant planning entity, at least one Class IV member of a **relevant board of chosen freeholders, one member of a relevant county planning board** [from an affected municipality within the region, at least one member of another local board, commission or committee from an affected municipality], [and] at least two representatives of the public who reside within the [jurisdiction] **area** [of the petitioner] and are not elected or appointed to any public position within said [jurisdiction] **area and at least one additional elected official, such that each political jurisdiction in the area is represented by an elected official at either the local, county or regional level. Membership in the advisory committee shall be subject to the approval of the Executive Director.** The public members may not hold an appointed or elected position within the municipality or be employed by said regional planning entity.

(Agency Note: N.J.A.C. 5:85-7.9 is proposed for recodification with amendments as N.J.A.C. 5:85-7.6.)

5:85-[7.8]7.9 Self-Assessment Report, form, content, adoption and submission requirements

(a) Petitioner shall prepare a Self-Assessment Report. Municipal petitioners may use the document entitled "Municipal Template Report," as posted on the Office of Smart Growth website as a template for the report. The **municipal** self-assessment report shall include, as a minimum:

1.-2. (No change.)

3. Any [relevant existing planning documents as listed in the plan endorsement guidelines, to the extent that they were not previously submitted in the pre-petition submission, whereby the zoning map shall be provided in Geographic Information Systems (GIS) format, or if GIS is unavailable, a high resolution scanned copy, and any] requests for mapping amendments to the State Plan, **such as planning areas and centers, [shall be provided] in digital GIS format;**

4. (No change.)

5. Any requests for waivers pursuant to N.J.A.C. 5:85-[7.9]7.6(a), including a justification for same;

[6. For petitioners having designated centers or previously endorsed plans, copies of all monitoring reports created pursuant to this chapter;]

6. A list of benefits petitioner seeks as a result of plan endorsement;

7. For petitioners representing a county, specific reference shall be made to identify and evaluate countywide efforts to provide for efficient use of natural and capital resources and to address planning for conditions for which a map change was requested in the latest round of cross acceptance; [and]

8. For petitioners representing a special resource area, specific reference shall be made to identify and evaluate planning efforts made specifically to provide for protection of the special resource area[.]; and

9. Data on square footage of commercial properties, number of households, acreage of vacant lands per municipal tax assessment, GIS parcels, and any other pertinent data mapping, to the extent that these files exist, to ensure accurate mapping of centers and other features.

(b)-(c) (No change.)

(d) Submission of the Self-Assessment Report to the Office of Smart Growth as part of a petition for plan endorsement shall include the following:

1. Proof of public notice **pursuant to N.J.A.C. 5:85-1.7(f)** for all required public meetings **in the form of an affidavit of publication;**

2.-3. (No change.)

5:85-7.10 State agency Opportunities and Constraints Assessment and Report

(a) (No change.)

(b) Within 45 days of receipt of the complete Self-Assessment Report, the Office of Smart Growth shall include the assessments provided by the relevant State agencies in an Opportunities and Constraints [Assessment] Report to the petitioner, summarizing the findings and conclusions of the opportunities and constraints assessment.

(c) The Opportunities and Constraints [Assessment] Report shall be used to inform the visioning process, described in N.J.A.C. 5:85-7.11 of existing conditions, and State agency assessment of planning related issues arising from these conditions.

(d) (No change.)

5:85-7.11 Community visioning process, vision statement development and adoption, and submission requirements

(a) Petitioner shall perform a community visioning process designed to maximize involvement of the community and structured so as to encourage consensus. Petitioner shall meet minimum requirements for conducting visioning sessions as set forth below and any additional agreed upon standards from plan endorsement guidelines and related support materials which may be called for depending on individual circumstances. Community visioning shall engage the public in many ways through a variety of tools. Each step in which the public is invited to participate shall be widely promoted using each of the following promotional efforts, if available: notice on the official municipal, county or regional entity website; notice on locally broadcast cable TV station(s); articles in local newspapers and written materials posted in municipal buildings, schools and local businesses; and by notice to the Office of Smart Growth. Findings of the visioning process shall be used to develop a vision statement for inclusion in the master plan. Minimum requirements for conducting a visioning process include:

1. At least [two] **three facilitated workshops** [held in public meetings in which information is gathered, interactive activities occur and] **consisting of interactive discussions with residents and other community stakeholders to identify the community's purpose, core values, and vision for a 20-year horizon. The workshops shall be noticed in a legal advertisement, which satisfies the requirements at N.J.A.C. 5:85-1.7(j). At these workshops, a variety of materials relating to the community, such as maps, photos and resource inventories, [are] shall be made available for review and discussion. The advisory committee shall, at least 10 days in advance of said workshops, issue provide further notice of the workshops according to N.J.A.C. 5:85-1.7(f)3, and shall provide the following additional notice, to the extent available, at least 10 days in advance of the workshops: issuing a press release to local newspapers promoting the workshops, [and post] posting notice of the workshops on the official municipal website, if available] and posting notice of the workshops in a conspicuous public place; and**

2. At least two public hearings during the course of the visioning process in which a preliminary vision statement is vetted and discussed. The advisory committee shall, at least 10 days in advance of said public hearings, issue a press release to local newspapers promoting the workshops, and post notice of the workshops on the official municipal website, if available and in a conspicuous public place. **The vision statement may be adopted as a part of the master plan. In this case, the hearings for such adoption shall be consistent with N.J.S.A. 40:55D-1 et seq., regarding adoption, revision or amendment of a master plan.**

(b)-(c) (No change.)

(d) Submission of the vision statement to the Office of Smart Growth as part of a petition for plan endorsement, which shall include the following:

1. Proof of public notice pursuant to N.J.A.C. 5:85-1.7(f) for all required public meetings and hearings in the form of an affidavit of publication;

2. A certified resolution from the governing body [or the planning entity for a county plan, regional plan or special resource area plan.] approving submission of the vision statement to the Office of Smart Growth;

3. (No change.)

4. A copy of the summary report; [and]

5. Copies of the meeting minutes of each public meeting and hearing at which the community vision was developed, reviewed and adopted. The minutes shall include a summary of public comments and copies of written comments filed before or during the public meeting or hearing[.]; and

6. A copy of the vision statement.

5:85-7.12 Commencement of consistency review

Upon receipt of all items submitted pursuant to N.J.A.C. 5:85-7.7, 7.8, 7.9 and 7.11(d) and any other plan implementation mechanisms identified by State agencies to be evaluated as requirements for consistency, pursuant to N.J.A.C. 5:85-7.5(d)3, the Executive Director shall commence the consistency review, post notice of receipt of required submissions and the commencement of review pursuant to N.J.A.C. 5:85-7.4 and send copies of the plan and supporting documents to the State agencies represented on the State Planning Commission and any other relevant State or Federal agency.

5:85-7.13 Consistency review

(a) Within 45 days of receipt of [the complete petition for plan endorsement] **items submitted pursuant to N.J.A.C. 5:85-7.12**, relevant Federal, State and regional agencies shall provide comments regarding consistency of the petition to the Executive Director. [State agencies shall have an additional 30 days to perform the consistency review when considering petitions of municipalities reestablishing center designations pursuant to N.J.A.C. 5:85-7.21.]

(b) Within 90 days of receipt of [the complete petition for plan endorsement] **items submitted pursuant to N.J.A.C. 5:85-7.12**, the Office of Smart Growth, in consultation with the relevant Federal, State and regional agencies, shall conduct a review of the plan for consistency with the goals, policies and strategies of the State Plan. [The Office of Smart Growth shall have an additional 45 days to perform the consistency review when considering petitions of municipalities reestablishing center designations pursuant to N.J.A.C. 5:85-7.21.]

(c) [A plan will be found consistent with the State Plan if it includes the submissions delineated in N.J.A.C. 5:85-7.12 and conditional requirements that are agreed upon between petitioner and the Executive Director, in consultation with the relevant State agencies, and if it meets the requirements of this section.] In conducting the consistency review, consideration will be given to the ability of the submitted plan to achieve the targets and indicators contained in the State Plan that are applicable to the petitioner; the extent to which the activities listed to be undertaken in each planning area can or will achieve consistency with the State Plan goals and implement Statewide sound planning policies, taking into account relevant State agency policies, rules and regulations, and whether the plan is based on current information and data. Consistency will be evaluated based on all the provisions of the State Plan with particular emphasis on the following provisions:

1.-8. (No change.)

[(d) If a municipal plan, submitted as part of a regional plan or county plan has any discrepancies with the regional plan, county plan, respectively, it may be endorsed so long as it is consistent with the State Plan.]

(d) A consistent municipal plan shall contain the following:

1. The submissions required pursuant to N.J.A.C. 5:85-7.12;
2. The following mandatory planning documents:
 - i. A sustainability statement;
 - ii. A land use element;
 - iii. A land use inventory or map;
 - iv. A zoning ordinance, schedule or map;
 - v. Documents detailing recent or upcoming developments;
 - vi. A circulation element;
 - vii. A municipal stormwater management plan and ordinance;
 - viii. A wastewater management plan;
 - ix. A housing element;
 - x. A petition for substantive certification filed with COAH or compliance with court-ordered housing;
 - xi. A draft fair share plan and implementing documents/ordinances;
 - xii. A community facilities plan, inventory and map;
 - xiii. A board of education five-year facilities plan;
 - xiv. An open space and recreation plan;
 - xv. A natural resource inventory;
 - xvi. A conservation plan and implementing ordinances;
 - xvii. Recycling Statement of Consistency;
 - xviii. A municipal recycling ordinance;

xix. A New Jersey State Police letter approving the local emergency operating plan; and

xx. A capital improvement program; and

3. The following conditional items, which may be required depending on local circumstances:

i. A utility service plan;

ii. A flood control plan;

iii. A recreation and open space inventory;

iv. An economic development plan;

v. An agricultural retention plan/farmland preservation plan, agricultural advisory committee, right-to-farm ordinance, and implementation program;

vi. A historic and cultural resources inventory, historic preservation plan, and implementation documents and mechanisms;

vii. Incorporation of hazard mitigation measures into relevant planning documents;

viii. A sustainability element; and

ix. Any additional requirements that are agreed upon between petitioner and the Executive Director, in consultation with the relevant State agencies;

(e) During the consistency review period, the Office of Smart Growth, at the discretion of the Executive Director, may hold a public hearing in an appropriate jurisdiction to receive testimony on the petition. The Office of Smart Growth shall hold a public hearing in an appropriate jurisdiction to receive public comment on the petition if the Executive Director receives a written request for such a hearing within 10 days of posting notice [of receipt of a complete petition] pursuant to N.J.A.C. 5:85-7.12 from:

1.-3. (No change.)

5:85-7.14 Finding of consistency and recommendation report

(a) After receipt of [a complete petition as defined in] items submitted pursuant to N.J.A.C. 5:85-7.12, the Executive Director shall make a determination as to whether or not a plan that is the subject of a petition for plan endorsement is consistent with the State Plan as described in N.J.A.C. 5:85-7.13 and the petitioner has fulfilled all requirements for plan endorsement as described in this chapter and relevant parts of the Plan Endorsement Guidelines. In the event the Executive Director determines the plan is consistent with the State Plan, then the Executive Director shall prepare a recommendation report to the Commission for its consideration, within [45] 60 days of [receipt of the complete petition] the conclusion of the 90-day consistency review period, containing detailed findings and conclusions to support the determination. The Executive Director may then issue a Certificate of Eligibility to petitioner pursuant N.J.A.C. 5:85-7.16. The Commission shall then consider the petition pursuant to N.J.A.C. 5:85-7.19.

(b) If the Executive Director determines that additional action must be taken to complete the self-assessment, visioning[,] or other action necessary to achieve consistency, the Executive Director shall, in consultation with the relevant State agencies and petitioner, develop a draft Memorandum of Understanding and draft Action Plan pursuant to this subchapter. The Action Plan may include designation of an interim center, including a map depicting same. [Then, the] The Executive Director shall submit the drafts to the Commission for its consideration at a public hearing and petitioner shall continue to pursue plan endorsement as described in further detail below.

1.-3. (No change.)

5:85-7.15 Action Plan and Memorandum of Understanding adoption, submission and completion

(a) Within 60 days of the State Planning Commission's execution of the Memorandum of Understanding pursuant to N.J.A.C. 5:85-7.14(b), or within a reasonable period of time as agreed to by the Executive Director, the petitioner shall authorize execution of the Memorandum of Understanding by resolution at a public hearing of the governing body, or the [regional] relevant planning entity for a regional [plan], county or special resource area plan, to commit to complete the requirements identified in the Action Plan to achieve endorsement of the petitioner's plan.

1.-2. (No change.)

3. Petitioner shall submit the fully executed Memorandum of Understanding to the Executive Director. Submission of the executed Memorandum of Understanding shall include the following:

i. Proof of public notice pursuant to N.J.A.C. 5:85-1.7 for all required public meetings and hearings in the form of an affidavit of publication;

ii. (No change.)

iii. A copy of the meeting minutes of each public meeting and hearing at which the Memorandum of Understanding and Action Plan were reviewed [and adopted includes]. The minutes shall include a summary of public comments and copies of written comments filed before or during the public hearing(s); and

iv. (No change.)

(b) If petitioner fails to execute the Memorandum of Understanding to enter into the Action Plan with the State Planning Commission within 60 days of the Commission's execution of the Memorandum of Understanding, or within a reasonable period of time as agreed to by the Executive Director, in consultation with relevant State agencies, the petition will be considered to have been withdrawn without prejudice and the petitioner so notified. Notice of any such withdrawal shall be provided by the Office of Smart Growth to the petitioner, and the Commission pursuant to N.J.A.C. 5:85-1.7(h) and 7.4(b).

(c) (No change.)

(d) Interim centers shall remain designated for two years provided petitioner continues making progress in following the Action Plan. Interim centers may be revoked by the Commission in the event petitioner fails to satisfy action plan deadlines, based on a recommendation by the Executive Director, in consultation with relevant State agencies. Boundaries of interim centers shall be used to define boundaries of designated centers and may only be amended if they are shown to be inconsistent with the State Plan as determined by the Commission.

5:85-7.16 Certificate of Eligibility

(a) A Certificate of Eligibility for Plan Endorsement represents to the State the commitment of a municipality, county, or regional entity to adopt and implement a plan consistent with the State Plan and based on available resources and infrastructure. The Certificate of Eligibility qualifies a petitioner to State agency assistance in preparing and updating plans for endorsement and authorizes petitioner to pursue parallel planning efforts, including, but not limited to, [developing a transfer of development rights (TDR) program pursuant to the State TDR Act (N.J.S.A. 40:55D-137 et seq. and] seeking designation of areas in need of redevelopment that may be appropriate but are outside of smart growth areas pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.). The Executive Director shall issue a Certificate of Eligibility as follows:

1. When a petitioner submits a [complete and] consistent petition pursuant to N.J.A.C. 5:85-[7.11 and 7.12]7.14(a);

2. In the event additional steps are needed to achieve consistency, within 10 days of receipt of a fully executed Memorandum of Understanding and Action Plan pursuant to N.J.A.C. 5:85-[7.12 and 7.13]7.14(b) and 7.15, respectively; and

3. (No change.)

(b) (No change.)

5:85-7.17 Draft Planning and Implementation Agreement

[If the Executive Director determines, in consultation with relevant State agencies, that a petition would be consistent with the State Plan, if accompanied by a Planning Implementation Agreement, then they shall work with the petitioner] Prior to receiving endorsement, the petitioner shall work with relevant State agencies to develop a draft Planning and Implementation Agreement, that outlines [outstanding planning efforts,] planning implementation mechanisms for the petitioner to undertake during the 10-year endorsement period so that the petitioner will achieve the goals and vision described in the endorsed plan, and State agency benefits needed to successfully implement the plan once endorsed. [The draft Planning and Implementation Agreement shall be developed to meet the unique characteristics of the petitioner.] The draft Planning and Implementation Agreement shall be adopted as part of the Commission resolution

granting endorsement of a petition pursuant to N.J.A.C. 5:85-7.19. Petitioner's ability to maintain endorsement over the 10-year period shall be contingent upon fulfilling the obligations of the Planning and Implementation Agreement.

5:85-7.18 Recommendation report, review of petition, and direct petition

(a) Within [45] 60 days of satisfaction of action items in an Action Plan, [and if relevant, development of a draft Planning and Implementation Agreement pursuant to N.J.A.C. 5:85-7.17,] the Executive Director shall [evaluate a complete petition for plan endorsement and] prepare a recommendation report to the Commission. The report shall either determine that the plan is consistent or not consistent with the State Plan. [If the Executive Director determines the petitioner's plan is not consistent with the State Plan, the Executive Director shall either recommend the necessary changes that should be required by the Commission to make the petitioner's plan and draft Planning and Implementation Agreement consistent with the State Plan or recommend that the petition be denied by the State Planning Commission.]

(b) Within 45 days after receipt of the Executive Director's recommendation report, a duly authorized subcommittee of the Commission shall review the Executive Director's recommendation report and shall recommend that the petition be considered for approval, approval with revisions or denial by the Commission at its next regularly scheduled meeting.

(c)-(d) (No change.)

5:85-7.19 Plan endorsement by State Planning Commission

(a) Within 45 days after receipt of the subcommittee's recommendation pursuant to N.J.A.C. 5:85-7.14 [or 7.18,] or a direct petition pursuant to N.J.A.C. 5:85-7.18, the Commission shall conduct a hearing to consider the petition and Executive Director's report and affirm, revise or reverse the Executive Director's recommendation on the petition or the petitioner's direct petition for endorsement. If the Commission determines that the plan is consistent with the State Plan, it shall approve the petition for plan endorsement and authorize execution of the Planning and Implementation Agreement[, if relevant]. If the Commission determines the plan is not consistent with the State Plan, the Commission shall either request the petitioner to make necessary changes[, so that the plan is consistent with the State Plan, prepare an Action Plan] to address requirements that must be met in order to achieve consistency with the State Plan, or deny the petition. The Commission's approval or denial of a petition is a final agency action.

1. (No change.)

5:85-7.20 Extension of time requirements

(a) (No change.)

(b) The Executive Director may extend any time period in this subchapter up to an additional 90 days for the purpose of requesting additional information necessary to adequately and appropriately evaluate a petition for plan endorsement, an amendment to a previously endorsed plan or center designation. The period of review shall be extended [60] 30 days after the receipt of the requested additional information by the Office of Smart Growth.

(c) Public notice of any extensions shall be provided [to the petitioner, to those interested persons and organizations who have registered with the Office of Smart Growth in accordance with N.J.A.C. 5:85-1.6(b)] pursuant to N.J.A.C. 5:85-7.4.

[(d) For petitioners seeking initial or advanced plan endorsement, the Executive Director and petitioner, upon mutual agreement, may extend deadlines for petitioner to make required submissions as needed to satisfy substantive requirements of plan endorsement. Such extended deadlines shall be included in a Memorandum of Understanding between the Executive Director and petitioner and shall be adopted by petitioner at a public meeting.]

5:85-7.21 Period of endorsement

(a) (No change.)

[(b) Comprehensive Management Plan Regional Growth Areas, Towns, and Villages that are certified by the Pinelands Commission are recognized as equivalent to being endorsed by the Commission, for as

long as the municipality within which the Pinelands Growth Area, Town or Village is located, remains certified by the Pinelands Commission.]

(b) In the Pinelands, as defined by N.J.A.C. 7:50-2.11, the Pinelands Commission's certification of a municipality's master plan and land use ordinances pursuant to N.J.A.C. 7:50-3.31 et seq., is deemed equivalent to endorsement by the Commission for the purposes of qualifying municipalities for benefits of plan endorsement, provided the municipality's master plan and land use ordinances remains certified. Pinelands Regional Growth Areas, Pinelands Towns and Pinelands Villages within the municipalities having Pinelands Commission certified plans and implementing land use ordinances are deemed equivalent to designated regional centers, town centers and village centers, respectively, as defined in the State planning rules and State Plan, for the purposes of determining eligibility for State agency benefits of plan endorsement.

(c)-(d) (No change.)

(e) Designated centers[, cores and nodes] approved after January 7, 2002 and prior to July 1, 2004, other than centers designated in an endorsed plan, shall be endorsed for a period of six years from the date of designation by the Commission.

[(f) Centers endorsed according to sections (d) and (e) above, that have already expired in 2008 or will expire in 2008, may be temporarily reestablished through April 20, 2010, by formally initiating plan endorsement. The process for temporary reestablishment of boundaries is as follows:

1. Petitioners shall formally initiate plan endorsement by submitting documents and attending a pre-petition meeting pursuant to N.J.A.C. 5:85-7.6, appointing an advisory committee and completing a municipal Self-Assessment Report pursuant to N.J.A.C. 5:85-7.7. A petitioner shall request temporary reestablishment of an expired center in the cover letter required pursuant to N.J.A.C. 5:85-7.7.

2. The Executive Director shall, in consultation with relevant State agencies, recommend an interim boundary for the temporarily reestablished center prior to the pre-petition meeting. The interim boundary shall be discussed at the pre-petition meeting, and submitted to the Commission for consideration at its next regularly scheduled meeting to temporarily reestablish the center based on the interim boundary. For petitioners that have attended a pre-petition meeting prior to April 20, 2009, an interim boundary shall be recommended by the Executive Director by May 20, 2009; and

3. A map depicting the interim boundary shall be provided to petitioner at the pre-petition meeting and any modifications to the original boundary will be explained as part of the Opportunities and Constraints Report. For petitioners that have attended a pre-petition meeting prior to April 20, 2009, a map depicting the recommended interim boundary shall be provided to petitioner by May 20, 2009.

(g) A center that has been temporarily reestablished according to (f) above, may be extended for an additional two years, if petitioner qualifies for a Certificate of Eligibility within the one-year period, with the following limitations:

1. The boundaries of the reestablished center may be further modified by the Commission, for good cause shown, based on the consistency review performed in accordance with N.J.A.C. 5:85-7.13 and a recommendation by the Executive Director, in consultation with relevant State agencies;

2. If petitioner fails to comply with the terms of the Memorandum of Understanding and Action Plan the Executive Director shall prepare a report to the State recommending revocation of the reestablished center. The Commission shall consider the report at a public hearing and shall affirm, revise or deny the Executive Director's recommendation to revoke within 60 days of receipt of the report; and

3. If a complaint is received by the Office of Smart Growth or the Commission of the failure of a petitioner with a reestablished center to comply with the terms of a Memorandum of Understanding and Action Plan, the Executive Director shall investigate and prepare a report to the Commission within 45 days of receiving the complaint. If the investigation establishes that a petitioner has failed to comply with the terms of the Action Plan and Memorandum of Understanding, then the Executive Director shall prepare a report to the Commission recommending revocation of the reestablished center. The Commission

shall consider the report at a public hearing and shall affirm, revise or reverse the Executive Director's recommendation within 60 days of receipt of the report.]

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

(a) (No change.)

(b) [Municipalities] **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[s] to the Executive Director on the status of their Planning and Implementation Agreement efforts, with biennial reports due thereafter, unless otherwise agreed. [1.] The annual [report] and biennial reports shall include any Board of Adjustment Annual Report on Variances pursuant to N.J.S.A. 40:55D-70.1, planning board reports, and significant updates to other planning materials submitted as part of the petition for plan endorsement, including zoning ordinances or other implementation measures, adopted since plan endorsement, or prior center designation and submission of the last annual report. The report shall state how these items are consistent with the State Plan, the endorsed plan and the terms of the Planning and Implementation Agreement.**

[2. If the State Plan has been readopted since a plan was endorsed, the next annual report scheduled to be filed by the petitioner, that is due at least six months following said readoption, shall address whether there are any changes in the readopted State Plan that impact the endorsed plan. If any such changes are identified, a detailed description of either how the endorsed plan and Planning and Implementation Agreement are consistent with the readopted State Plan, or the changes that will be made in the endorsed plan or Planning and Implementation Agreement, so that they will be consistent with the readopted State Plan, shall be included in the annual report.]

(c) (No change.)

(d) If a complaint is received by the Office of Smart Growth or the Commission of failure to comply with the terms of an endorsed plan or the Planning and Implementation Agreement or a **Planning Implementation Agenda prepared in connection with a prior center designation, within 45 days of receipt of said complaint, the Executive Director shall investigate and report to the Commission. Public notice of any such complaint and any report by the Executive Director shall be provided [to the petitioner to those interested persons and organizations who have requested notice from the Office of Smart Growth in accord with N.J.A.C. 5:85-1.6(b) and posted on the Office of Smart Growth website] in accord with N.J.A.C. 5:85-7.4.**

5:85-7.23 Revocation of plan endorsement or prior center designation

(a) (No change.)

(b) Within [60] **45** days of the issuance of the monitoring report by the Executive Director, the Commission or its duly authorized subcommittee shall review the recommendation report of the Executive Director and the Commission shall affirm, revise, or reverse the recommendation based on its determination of whether the endorsed plan or prior center designation remains consistent with the State Development and Redevelopment Plan. Except for a revision of the recommendation, the Commission determination regarding revocation shall be a final agency action.

(c) Within [30] **45** days after Commission action, as set forth in (b) above, the Executive Director shall provide notice of the decision to the petitioner, pursuant to N.J.A.C. 5:85-1.7(i) and post notice pursuant to N.J.A.C. 5:85-7.4.

(d) (No change.)

5:85-7.24 Petitions to amend endorsed plans, previously designated centers, Planning and Implementation Agreements

(a) Petitions to amend endorsed plans, previously designated centers or Planning and Implementation Agreements may be submitted by the original petitioner, in its annual report, unless either the endorsement period will end in less than two years or it can be demonstrated that, for special reasons, the proposed amendment cannot wait until the next [annual] **biennial** report is due.

(b) A petition to amend shall include, at a minimum:

1. (No change.)

2. A statement updating the petitioner's latest annual report, if the petition amendment is not being proposed as part of a [annual] **biennial** report;

3. (No change.)

4. Proof that notice of submission of the petition to amend to the Executive Director has been provided pursuant to N.J.A.C. 5:85-1.7 in the form of an affidavit of publication;

5. A certified resolution from [each] the governing body for a **municipal petitioner** or [regional] the relevant planning entity for a county plan, regional plan or special resource area plan, that is impacted by the petition to amend, approving the petition to amend, wherein said certified resolution authorizes the official of the municipality[, county or regional] or the relevant planning entity to submit the petition and execute any requested or required amendment;

6.-9. (No change.)

10. A statement describing:

i.-iii. (No change.)

iv. The reason(s) why the amendment is not being proposed as part of [an annual] a **biennial** report, if the amendment is not being proposed as part of [an annual] a **biennial** report; and

11. (No change.)

(c)-(d) (No change.)

(e) In cases where the Executive Director finds that the petition to amend is submitted in accordance with this subchapter, or is resubmitted correctly pursuant to (a) and (b) above, the Executive Director shall provide public notice in accordance with N.J.A.C. 5:85-[1.7(h)]**1.7(b)** and send copies of the petition, plan and supporting documents to the State agencies represented on the Commission and any other relevant State or Federal agency.

(f) (No change.)

(g) Within the State and Federal agency 60-day review period, the Office of Smart Growth may hold a public hearing in an appropriate jurisdiction to receive public comment on the petition with public notice provided pursuant to N.J.A.C. 5:85-[1.7(h)]**1.7(b)**.

(h)-(i) (No change.)

(j) The Executive Director shall prepare a report containing detailed findings and conclusions concerning the consistency of the subject of the petition to amend with the State Plan. The Executive Director shall provide notice of the report pursuant to N.J.A.C. 5:85-[1.7(h)]**1.7(b)** and forward the report to the Commission, the petitioner and post the report on the Office of Smart Growth website.

1.-3. (No change.)

(k) (No change.)

(l) Within [60] **45** days after receipt of the recommendation, the Commission shall conduct a hearing on the petition to amend and affirm, revise or reverse the Executive Director's recommendation, based on its determination of whether the subject of the petition is consistent with the State Plan. The Commission determination on the petition to amend shall be a final agency action.

(m) The Executive Director shall, within 30 days after Commission action as set forth in [(j) or (k)] (l) above, notify the petitioner in writing of the Commission's determination, findings and recommendations regarding the petition to amend.

(n) (No change.)

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning on December 20, 2004

Proposed Readoption: N.J.A.C. 5:94

Authorized By: New Jersey Council on Affordable Housing, Lucy Vandenberg, Executive Director.

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