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STATE PLANNING COMMISSION**State Planning Rules****Adopted Amendments: N.J.A.C. 5:85-1.4, 1.6 and 1.7****Adopted New Rules: N.J.A.C. 5:85-1.8****Adopted Repeals and New Rules: N.J.A.C. 5:85-7**

Proposed: June 16, 2008 at 40 N.J.R. 3350(b).

Adopted: December 3, 2008 by State Planning Commission,
Benjamin L. Spinelli, Secretary and Principal Executive Officer.
Filed: January 22, 2009 as R.2009 d.61, with technical changes not
requiring additional public notice and comment (see N.J.A.C.
1:30-6.3).

Authority: N.J.S.A. 52:18A-203.

Effective Date: April 20, 2009.

Expiration Date: August 21, 2013.

The State Planning Commission (Commission) is adopting the repeals and new rules for the State Planning Rules on plan endorsement at N.J.A.C. 5:85-7. In addition, related amendments are being adopted on rules regarding: definitions at N.J.A.C. 5:85-1.4, public participation at N.J.A.C. 5:85-1.6 and public notice at N.J.A.C. 5:85-1.7. Finally, the Commission is adopting a new rule regarding severability at N.J.A.C. 5:85-1.8. The proposal was published on June 16, 2008. The comment period closed on August 15, 2008.

The Commission is proposing amendments to N.J.A.C. 5:85-1.4, 1.6, 1.7 and 7 in a notice of proposal, published elsewhere in this issue of the New Jersey Register, (hereinafter "Companion Proposal"). The proposed amendments are in response to comments published in this notice of adoption and based on internal discussions within the Commission, which are discussed in more detail in the Companion Proposal.

Summary of Public Comments and Commission Responses:

The following submitted comments:

1. Scarlett Doyle, PP on behalf of Patricia Flannery—Mayor, Township of Bridgewater
2. Joanne Harkins, PP, AICP, Vice President of Regulatory Affairs—New Jersey Builders Association
3. Larry Liggett, Director Land Use and Technology Programs—Pinelands Commission
4. Tiffany Cuvillo, PP, AICP, Township Planner, Township of Galloway

The timely submitted comments and the Commission's responses are summarized below. The number(s) in parentheses after each comment correspond to the respective commentator(s) identified above.

General Comments

1. COMMENT: The proposed plan endorsement rules are very complex, will be exceedingly expensive to implement and should be abandoned. No level of government, including the State of New Jersey, its counties and its municipalities, has the financial and human resources that would be needed to implement the proposed changes. (2)

RESPONSE: The Commission acknowledges there is some complexity to the rules and expense in implementation but it believes that the comprehensive planning resulting from participation in plan endorsement represents a fair balance between necessary community involvement, State agency coordination and cost efficiency in planning. The Commission is concerned that simplifying plan endorsement to be more cost effective may not be possible without sacrificing the comprehensive planning that results from the plan endorsement process as proposed.

In addition, achieving consistency with the State Development and Redevelopment Plan (State Plan) is highly dependent upon the amount of additional planning needed beyond what has already been done by a municipality or other planning entity. The rules include waiver provisions that allows for flexibility in the process and to avoid redundancy in planning efforts. Plan endorsement requirements for establishing an advisory committee, performing visioning or completing a self-assessment report can be waived by the Executive Director, in

consultation with relevant State agencies, if the petitioner has satisfactorily completed the requirements or has substantially complied with the intent of the requirement. In addition, certain tasks required of petitioners in plan endorsement can be waived by the Commission, if the intended comprehensive planning goals have been achieved using alternative implementation mechanisms or if the requirement is determined to be inappropriate or unnecessary to achieve intended comprehensive planning goals, based on a petitioner's unique circumstances. Waivers must be requested in writing. Furthermore, there is no requirement that the self-assessment report or many of the other tasks associated with plan endorsement be prepared by a consultant.

Some of the complexity and expense of plan endorsement is related to requirements of the existing land use regulatory scheme in the State that are imposed on municipalities regardless of whether or not they choose to participate in plan endorsement. This complexity is not within the power of the Commission to address. In fact, the Commission encourages State agencies to minimize the complexity of the current regulatory scheme and multi-jurisdictional obligations imposed on local land use planning within the State. Agencies are encouraged to coordinate efforts to control land use, to cross-check regulatory programs with the State Plan to assure consistency and to dovetail and streamline regulatory programs. Improvements in this area could go a long way in avoiding some of the complexity and rigidity that are responsible for a substantial amount of the cost of satisfying plan endorsement requirements.

Some of the complexity of the new rules is related to the new community involvement requirements (that is, formation of a Plan Endorsement Advisory Committee, Community Visioning Requirements and preparing a Vision Statement). The community involvement requirements are a very important new aspect of plan endorsement. Residents often participate in planning only when notified of a potential development in their midst by receipt of Municipal Land Use Law (MLUL) (N.J.S.A. 40:55D-1 et seq.) required notice in the form of a certified mail letter describing development activities proposed within 200 feet of their property. There is a need to increase resident's knowledge of and participation in local planning to offset the problems in the current local land use scheme. The present rules empower residents by creating a participatory framework for them to be meaningfully involved with members of the governing body and planning board in planning their communities.

Ideally, State agency benefits arising from achieving the milestone of plan endorsement offset a substantial amount of the costs. The Commission continues to engage various State agencies in an effort to obtain more and better benefits to plan endorsement. In an effort to address costs of plan endorsement, the Commission also encourages State investment in local planning efforts through the Smart Growth grant program administered by the Office of Smart Growth and from other sources.

2. COMMENT: Prior versions of plan endorsement to determine local government consistency with the State Plan were marginally effective because local governments lacked the resources to go through the process, grant funding to local governments for this purpose have been limited, and the State agencies, including the Office of Smart Growth, did not have the budget or staffing needed to review more than two dozen plans a year. Meanwhile, center designations have expired or will expire shortly. The proposed amendments and new rules do not improve on the existing situation. (2)

RESPONSE: Issues relating to lack of resources at the local government level have been addressed above in the Response to Comment 1. Timely review of petitions to renew plan endorsement and retain center designations can be achieved if petitioners seek endorsement timely. The Commission is concerned that simplification of the plan endorsement process to reduce costs may result in inferior planning efforts and may defeat the purpose of plan endorsement.

Historically, centers were designated in a process that was not comprehensive and protection of the environs was not addressed. Designating centers without a corollary protection of environs is not necessarily consistent with the State Plan. The Commission believes extension of centers absent comprehensive planning is unlikely to further the goals, policies and objectives of the State Plan. The new plan endorsement rules address this concern.

The plan endorsement rules are designed to be comprehensive to establish a program that is credible in the eyes of the public, so as to merit the extension of State agency benefits. The rules are also crafted to be robust enough to address the great diversity of communities while also being targeted enough to address the current status of a petitioner's planning efforts and avoid unnecessary or redundant planning efforts. The Commission is committed to continued engagement with relevant parties familiar with planning to continue to refine and streamline plan endorsement to reduce time and cost without compromising the result.

3. COMMENT: The Commission should evaluate alternatives to move forward with plan endorsement that are not so resource dependent. (2)

RESPONSE: Issues relating to resource constraints and considering alternatives to the proposed plan endorsement process have been addressed above in Response to Comments 1 and 2. In addition, the Commission is crafting guidelines for county plan endorsement. If county endorsement is achieved, it is anticipated that subsequent endorsement of individual municipal plans within an endorsed county will be less costly. Counties will be encouraged by the Office of Smart Growth to pursue plan endorsement as an effort to promote regional planning in the future.

4. COMMENT: Municipalities, counties and regional planning entities should be permitted to make their own center designations that they find to be consistent with the State Plan goals and objectives. The Commission has to trust the decisions made by other governmental units. The decisions may not be exactly the same as the Commission or others would have devised. They may be better, different, or in some cases, not as good. But, the decisions would still be moving forward in the direction of the State planning policy. The designations could be accompanied by an appeal process to the Commission if interested parties claim a significant deviation from State Plan goals and policy. (2)

RESPONSE: The State Planning Commission has the authority and responsibility to work with communities seeking to plan for land use, including the designation of centers. N.J.S.A. 52:18A-199(c). The MLUL gives the statutory authority to zone for development to municipalities that are not under the jurisdiction of a regional planning entity, such as the Pinelands Commission, Meadowlands Commission and Highlands Council. Such municipalities can zone for dense, mixed use center-based development without having to pursue plan endorsement. In addition, municipalities within regional planning jurisdictions often retain much of the statutory authority to zone. However, such zoning, absent comprehensive evaluation of land based resources, infrastructure availability, logical extensions of infrastructure, all within the framework of the State Plan, is not necessarily consistent with the State Plan.

Participation in plan endorsement is discretionary. If a municipality or other planning entity chooses to seek plan endorsement for a center-based design concept, and to qualify for State agency benefits arising from endorsement, then a comprehensive approach is needed. Center-based development, without more, is not necessarily consistent with the eight overarching goals of the State Plan or with the additional goals, policies and objectives delineated therein. Therefore, the Commission cannot support municipal center designations absent a comprehensive planning process as consistent with the State Plan or entitled to the benefits of plan endorsement.

5. COMMENT: Plan endorsement should be limited to ensuring that State agency plans and regulations are consistent with the State Plan. Some of the State agency enabling statutes may be inconsistent with State Plan goals and policies. For example, State agencies do not generally recognize the need for differing standards by planning area and center designation. Also, there is a well recognized problem that State agency plans and rules are not context sensitive to existing developed conditions and the goals and policies of the State Plan and local master plans for these areas.

The State Planning Act envisions Commission activity to resolve inconsistencies in the planning process. As established at N.J.S.A. 52:18A-199e, the Commission has the power and duty to periodically review State government "planning procedures and relationships and recommend to the Governor and the Legislature administrative or legislative action to promote a more efficient and effective planning process." Endorsement of State agency plans and regulations to ensure consistency with the State Plan would be a major step in moving New Jersey forward under a unified vision and regulatory environment. (2)

RESPONSE: The Commission agrees with the commentator that implementation of the State Plan would be advanced if more State agencies considered State Plan designations in rulemaking and allowed for, *inter alia*, context sensitive regulation of land uses.

The Commission agrees with the commentator that State agency functional plans, programs and rules should be consistent with the State Plan. Even though the State Plan is "discretionary," cooperation and coordination among the State agencies is recognized as an essential obligation of State administrative agencies by the New Jersey Supreme Court. 77 N.J. 514, 530-531 (1978). It is the Commission that has been authorized to develop the State Plan, which is designed to represent a balance of development and conservation objectives best suited to meet the needs of the State. N.J.S.A. 52:18A-200. Accordingly, State agency cross-checking of programs and rules that impact land use with the State Plan, in order to assure consistency therewith, is an appropriate mechanism to implement the State Plan at the State agency level. See, for example, 354 N.J. Super. 293, (2002). However, the Commission does not possess the authority to require agencies to assure their programs, rules and regulations are consistent with the State Plan or make specific reference to the State Plan and incorporate its language regarding land use goals and objectives in relation to planning areas and center designations.

Past administrations have addressed the issue of State agency plans being consistent with the State Plan through use of executive authority. For example, Executive Order No. 4 (2002) directs State agencies to incorporate the principles of smart growth and the State Plan into their functional plans and rules and requires State agencies include a "Smart Growth Impact" statement in its rulemaking, which is similar but not the same as requiring an analysis of consistency with the State Plan.

The Legislature has also recognized the need to coordinate efforts to implement the State Plan through its adoption of the Ombudsman Act. P.L. 2004, c. 89. The Act established an Ombudsman in the Department of Community Affairs, as well as Smart Growth Divisions in major State agencies having authority over various State planning functions. One duty of the Ombudsman is to review new rules proposed by State agencies and determine whether the proposed rules, as they pertain to smart growth areas, are consistent with the State Plan. A determination of inconsistency results in the rule being returned to the State agency making the proposal with recommended amendments needed to attain consistency.

Under the Act, State agencies are prohibited from filing proposed new rules as they pertain to smart growth areas, inconsistent with the State Plan. The requirement can be waived if the Chief Counsel to the Governor determines that the proposed rules are required to implement a Federal or State mandate. Pursuant to Executive Order No. 45 (2004), parts of this Act were repealed pending coordination with the Federal government of certain permit extension act provisions. However, the Ombudsman function is still legislatively mandated. In conclusion, each State agency remains autonomous in its rulemaking processes, subject to the limitations of the Ombudsman Act and Executive Order No. 4 (2002) and 45 (2004), described above.

The Commission agrees with commentator that the State Planning Act authorizes the Commission to periodically review State government planning procedures and relationships and recommend to the Governor and the Legislature action needed to promote a more efficient and effective planning process and that the Commission possessing statutory authority to act to resolve inconsistencies in the planning process. N.J.S.A. 52:18A-199e. To date the Commission has not participated in this function although recent efforts to that end have been initiated.

6. COMMENT: The State Planning Act created the Commission and assigned it the task of adopting the State Plan and the authority to adopt rules for cross-acceptance and plan endorsement. The current cross-acceptance process pertains to the Preliminary State Plan released in 2004 and is still in progress. However, revisions to the rules have occurred. The rules must be consistent with the State Plan, which current plan is the 2001 version, and the rules are inconsistent with that version of the State Plan. (4)

RESPONSE: The commentator has indicated that the plan endorsement rules must be consistent with the State Plan. However, the Act does not require that it adopt rules consistent with the State Plan.

Further, the Commission is not aware of any inconsistency between the proposed plan endorsement rules and the State Plan. Accordingly, the Commission cannot respond to the comment other than to clarify the terms of the State Planning Act as it pertains to the role of the State Plan and the Commission's authority to adopt rules. See N.J.S.A. 52:18A-203.

Plan Endorsement Advisory Committee

7. COMMENT: The plan endorsement process (as described in the plan endorsement Guidelines), refers to a petitioner, that for the purposes of selecting an advisory committee, could be referring to either multiple municipalities simultaneously pursuing designation of a regional center or individual municipalities. It should be clear that each municipality must select its own plan endorsement advisory committee when jointly pursuing plan endorsement with the intent of obtaining a regional center designation. (1)

RESPONSE: The Commission agrees with the need for this distinction and is proposing amendments to N.J.A.C. 5:85-7.3(a)3 in the Companion Proposal that expressly requires each municipality seeking a regional endorsement establish its own Plan Endorsement Advisory Committee.

8. COMMENT: The proposed rules require municipal petitioners to create a plan advisory committee to prepare a vision statement and guide the plan endorsement process. The use of such a committee is outside of, and in conflict with, the Municipal Land Use Law (MLUL). (2)

RESPONSE: The MLUL allows for formation of an advisory committee, appointed by the mayor, to assist or collaborate with the planning board in its duties, but the committee has no power to vote or take other action required of the board. N.J.S.A. 40:55D-27. The formation and duties of the advisory committee under the proposed rules is consistent with this provision of the MLUL. The proposed rules do delineate criteria for membership in the committee, as well as functions to be served by it that are more proscriptive than provided for in the MLUL, but they are not inconsistent with the MLUL. According to the MLUL, the persons shall serve at the pleasure of the mayor. The Commission expects that the appointed members of the plan endorsement committee will be allowed to serve throughout the plan endorsement process, regardless of changes in local administration, including the mayor. This expectation has not been made a requirement of the proposed rules.

9. COMMENT: It is recommended that the municipal housing coordinator be a member of the plan endorsement advisory committee due to their participation in the Council on Affordable Housing (COAH) program. (1)

RESPONSE: The proposed rules require the committee be comprised of from five to 10 members, of which five are pre-determined in terms of qualifications. A municipality may appoint a housing coordinator to serve in one of the remaining positions on the committee but the Commission does not believe this should be a requirement for all municipalities.

Self-Assessment Report

10. COMMENT: The Municipal Self-Assessment Report should require that the assessment specify the consistencies and inconsistencies with the policies, goals and principles established as a Smart-Growth policy for a "center" and a "regional center" to afford a better understanding of the points of "disconnect," which may exist in specific municipal visions and discerned through the review of Master Plans, Re-examination Reports and other planning documents and to set a record where negotiation must be focused. (1)

RESPONSE: The Commission appreciates the concern of the commentator on the potential for disagreements among petitioners that are municipalities pursuing plan endorsement for designation of a multi-jurisdictional regional center. The suggestion that the municipal visions be discerned through the review of various planning documents will be inherent in any multi-petitioner effort to seek designation of a regional center. In addition, it is anticipated that the municipalities will be represented by the same planner from the Office of Smart Growth staff who will consider the petitions in relation to each other and create opportunities for representatives of the various municipalities to discuss their vision and arrive at an agreed upon consensus, that is at the same time, consistent with the State Plan. Accordingly, the Commission does not believe it is necessary to formalize the manner in which the multi-

jurisdictional regional center is treated in the Municipal Self-Assessment beyond the requirement to inventory key characteristics of the relevant area. See also the Response to Comment 7 above.

Waivers

11. COMMENT: There is a need for a mechanism whereby a municipality can withdraw from its obligation to the requirements of plan endorsement and the planning and implementation agreement. (1)

RESPONSE: The proposed rules describe a voluntary process that a municipality may pursue to work cooperatively with relevant State agencies and, if successful, qualify for State agency benefits associated with plan endorsement. Obligations in a mutually agreed upon planning and implementation agreement (PIA) are mandatory, only so long as the petitioner intends to remain endorsed. Failure of a petitioner to satisfy the obligations can result in revocation of endorsement by the Commission. In addition, although there is no rule provision to address it, any petitioner can decide at any time to discontinue implementation of plan endorsement. The impact of such a decision would be to lose access to the State agency benefits associated with endorsement.

12. COMMENT: Much of the authority for enforcement of plan endorsement is vested in the Executive Director of the Office of Smart Growth alone. There should be an appeal process for decisions of the Executive Director, which may be contested by a municipality if a satisfactory conclusion cannot be reached. (1)

RESPONSE: The rule allows a petitioner to directly petition the Commission for plan endorsement. See N.J.A.C. 5:85-7.18(d)1. There is sole authority vested in the Executive Director over only two aspects of plan endorsement. In N.J.A.C. 5:85-7.13(e), the Executive Director has the authority to hold a public hearing during the consistency review period if conditions for a mandated hearing do not exist. In N.J.A.C. 5:85-7.15(b), the Executive Director has the authority to grant a reasonable extension of time for a petitioner to execute the negotiated Memorandum of Understanding and Action Plan in order to avoid the petition being considered withdrawn. In fact, the practice is for the Executive Director to make this decision in consultation with relevant State agencies and subsection (b) has been revised to reflect this change.

In all other aspects, the discretion of the Executive Director is dependent on consultation with relevant State agencies. These aspects include requirement(s) for: forming a plan endorsement advisory committee, submitting a self-assessment report, performing community visioning and preparing a vision statement to be waived at the discretion of the Executive Director in consultation with the relevant State agencies. Other authority is vested in the Commission, including deciding to affirm, revise or reverse the Executive Director's recommendation regarding: a petition for plan endorsement, a petition to amend, or revocation of plan endorsement, as well as waivers other than those mentioned above.

Regarding the request for an appeal process, it is anticipated that the waiver provision serves the function of an appeal during the plan endorsement process. Accordingly, there is no need for an appeal process during the plan endorsement process. Further, items in a PIA are negotiated with a petitioner. If agreement cannot be achieved then the process may be discontinued. If agreement is reached, the terms of the PIA last for the duration of plan endorsement, which is for a 10-year period. The Commission's decisions on: a petition for endorsement, a petition to amend or revocation of plan endorsement, are each a "final agency action." As these rules are subject to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., the appeal process delineated therein serves as the appeal process for these final agency actions.

Opportunities and Constraints Analysis

13. COMMENT: The State agency Opportunities and Constraints analysis, which includes assessments of growth potential, development, transportation, wastewater, water supply capacity and environmental constraints, should not be binding on a municipality if it believes there are areas of impact that are incorrect. This step does not afford a formal process to accept, reject or require further research into the conclusions of the State's investigations. (1)

RESPONSE: The Opportunities and Constraints report serves to inform a petitioner of the understanding of each relevant State agency as

to existing conditions in order to inform the visioning process, so as to reduce the possibility of a petitioner creating a vision that would be unachievable. However, the data provided by the State agencies is not determinative of the planning outcome, absent active involvement by the petitioner at every step. As new plan endorsement is an interactive process, petitioners are encouraged and allowed to comment directly to State agency representatives as to the relevance and integrity of its data. If a petitioner has better "on the ground" information that the State agencies, then that data will be used in developing and reviewing the plan for consistency, rather than less accurate data.

Visioning

14. COMMENT: There are specific guidelines and requirements for undergoing a community visioning process. The final community vision statement and the plan's goals and objectives are to be consistent with the State Plan and should guide petitioner's planning for a 20-year planning horizon that forecasts the local conditions at the conclusion of that period. There may be goals, objectives and eventually rules promoted in the State Plan, which are contrary to the vision of a community. The language in the rule does not permit deviation from the clear mandate of this provision. A municipality may elect not to meet each and every goal and objective in the State Plan. Also, while the State may offer its tacit approval for relief when there are unique circumstances related to the strict application of a rule, the truth is that others may invoke their right to litigate—to seek enforcement of the strict interpretation of this language. (1)

RESPONSE: The plan endorsement process does not test for exact alignment of a plan and every goal and objective of the State Plan. Rather, the State Plan is a policy guide that indicates the State's intentions regarding development in the State. Accordingly, exact alignment with the State Plan is an ideal to be measured against but not an absolute determination. The consistency determination is related to existing conditions and whether they can be improved to better reflect the State Plan. Many municipalities seeking plan endorsement do so because of land use development patterns that are problematic. The Office of Smart Growth staff and relevant State agencies work together to improve the situation to better reflect State Plan goals and objectives.

The Commission acknowledges that State agencies retain rulemaking authority and that rules that change land use requirements after plan endorsement can cause the endorsed plan to be inconsistent with the new regulatory scheme. The Commission agrees with commentator that the endorsed plan will then be inconsistent with proposed rules and the petitioner may need to further modify its land use planning and ordinances or risk exposure to litigation or fines due to the changed regulatory scheme.

In fact, experience has shown that after plan endorsement State agencies adopt rules that alter the requirements agreed upon in the comprehensive planning process and that often the new rules do not include a waiver provision to allow the agreed upon comprehensive planning to proceed without being revised to reflect the new requirements. The Commission supports regulatory reform of land use rules to allow the comprehensive planning agreed upon by petitioners to proceed if the subject of the rule is adequately protected pursuant to the endorsed plan.

The Commission has approached State agencies requesting flexibility in rulemaking to accommodate the comprehensive planning performed in plan endorsement and to allow the comprehensive planning to proceed as agreed upon. This is an ongoing effort that the Commission intends to step up in the future. It is not an efficient use of tax dollars to regulate in a fashion that undermines comprehensive land use planning and requires constant revisions of land use plans, especially comprehensive plans that have been vetted and agreed to by State agencies during plan endorsement.

The Commission acknowledges commentator observations that the State may offer tacit approval for relief when there are unique circumstances related to the strict application of a rule, but that others may invoke their right to litigate seeking enforcement of the strict interpretation of this language. The Commission supports legislative reform to the State Planning Act that would provide a legal shield to petitioners that have achieved plan endorsement and are implementing a

planning and implementation agreement to protect from such litigation as a benefit of plan endorsement.

15. COMMENT: The Legislature has made a determination through the MLUL that the planning board, in preparing and adopting the master plan, has the planning authority for a municipality. This should include visioning. The municipal governing body and the planning board share implementation authority. The governing body adopts the zoning and land development ordinances to implement the master plan. The planning board reviews and approves, as appropriate, development applications that follow the master plan and ordinances. In its rules, the Commission must recognize the statutorily defined responsibility of the planning board. (2)

RESPONSE: The Commission acknowledges the legal authority the MLUL grants to planning boards and governing bodies over local land use decisions, and specifically the authority of the planning board to adopt the master plan and revisions thereto. The purpose of the vision statement is more than just a planning document to guide development of master plan elements and zoning ordinances. Rather, it serves as a touchstone, to articulate in a broader sense, the community's vision of its future. The requirements for the visioning process that lead to formulation of the vision statement have been carefully thought out to be inclusive and promote full community involvement. For example, public notice requirements for the visioning sessions are stepped-up to maximize public interest and engagement. The composition of the plan endorsement advisory committee is designed to allow a broad spectrum of representation. In fact, it mandates at least two public-at-large members be appointed in an attempt to assure inclusiveness. The new visioning process is a key aspect of new plan endorsement because it actively involves the residents in planning its community.

In the Companion Proposal, the Commission is proposing to amend N.J.A.C. 5:85-7.11(a)2 to revise the language to state that the governing body submits a certified resolution approving submission of the vision statement to the Office of Smart Growth. This language does not pre-suppose the vision statement will be adopted by the planning board into the master plan. However, petitions should expect to have the Action Plan include the requirement that the planning board adopt the vision statement in to the master plan as a condition of plan endorsement.

Consistency Review and Determination

16. COMMENT: The consistency review section indicates the Office of Smart Growth (OSG) will draft an Action Plan and Memorandum of Understanding outlining the steps petitioner needs to take to bring local plans into consistency with the State Plan. There is no formal process for OSG to modify the Action Plan to be consistent with the vision of the community but in conflict with a provision of the State Plan. Negotiation of the content is not discussed in this section. (1)

RESPONSE: The Action Plan delineates the tasks to be undertaken by the petitioner to address inconsistencies detailed in the consistency letter. It also includes agreed-upon actions to be taken by State agencies. If agreement cannot be reached, the petition for plan endorsement will not proceed. The OSG planning staff includes skilled professionals that understand there are many ways to plan for a sustainable future that are consistent with the State Plan. Creative solutions to planning issues are often the result of plan endorsement. The Commission anticipates there are few circumstances where consistency cannot be reached consistent with a community's vision. However, it is possible that even creative planning solutions cannot bridge a gap between sound land use planning consistent with the State Plan and a community's vision. In these situations, plan endorsement cannot proceed. The Commission anticipates such situations should be rare. The petitioner always has the right to petition the Commission directly for plan endorsement.

17. COMMENT: The consistency review section includes a requirement for external consistency with documents that have not yet been adopted and with documents that may be amended some time in the future. The date of publication of the relevant documents is not listed in the rules or Guidelines. It is not reasonable to expect a municipality to agree to consistency with documents that have not even been drafted or which may be modified some time in the future. Examples of such documents include: State Plan, State Programs and Initiatives (that is, Economic Growth Strategy), COAH, Coastal Area Facilities Review Act

(CAFRA), Water Quality Management Plan, Water Supply Master Plan, Department of Transportation (DOT) corridor studies, county plans and programs). The potential for problems is enormous. Adoption of the Guidelines or rules should wait until all documents are published so there can be meaningful dialog and negotiation. (1)

RESPONSE: The Commission agrees with this comment and believes that demonstration of consistency with existing State agency plans and programs is all that can reasonably be expected of any petitioner in petitioning for plan endorsement. It is appropriate for consistency with as yet adopted rules, or compliance with regulatory deadlines that have not yet occurred, be made a part of a planning and implementation agreement to give adequate time to petitioners to complete regulatory requirements.

Action Plan and Memorandum of Understanding

18. COMMENT: The external consistency determination requires the petitioner describe how local land use and zones, whether existing or proposed, correspond with Centers and Planning Areas depicted on the State Plan Policy Map. This implies that petitions that include a regional center designation should expect to zone for greater development intensity in the center, including a mixed use aspect, within the limits of the center. (1)

RESPONSE: The commentator is correct about the expectations of the Commission in creating centers. Areas where development already exists, and where there is infrastructure in the form of sewer service and access to adequate supplies of potable water, are where concentrated growth should occur. This is the proper manner in which to efficiently use publicly funded infrastructure. If a municipality is unwilling to accept density to accommodate growth in centers, as well as adopt implementation mechanisms to protect the environs then it probably should not seek plan endorsement. However, a regional center may have areas where lower density, or parkland and other public amenities are appropriate. It also may have critical environmental areas that must be protected. Thus, any particular density limitations and development patterns need to be addressed as part of the plan endorsement process. This is a case-by-case analysis that cannot be predicted in advance of plan endorsement.

19. COMMENT: The external consistency requirement indicates that in order to establish that the plan furthers smart growth principles it must embrace dense growth in its designated center even if the visioning process, which is a fundamental aspect of plan endorsement, reveals that the public does not intend to accept enhanced growth in a designated center. (1)

RESPONSE: Commentator has identified a situation where a petitioner is likely to have difficulty achieving plan endorsement. Without enhanced development in centers, particularly where transit oriented villages exist or would be appropriate, the savings in public investment in infrastructure, as well as other goals of the State Plan, cannot occur. Growth in centers will vary and reflect densities that are appropriate for the type and location of the center. Depending on the visioning process, densities will be selected to maintain the sense of place and character of the community. It would not be appropriate to extend the benefits of plan endorsement to a petitioner unwilling to advance the goals of the State Plan through center-based development. However, centers may not be appropriate in municipalities not served by infrastructure and possessing significant environmental resources that are targeted for protection in the State Plan for protection.

20. COMMENT: Can external consistency be achieved in a regional center through enhanced density being limited to a certain area within the regional center? (1)

RESPONSE: Each petition is considered based on the individual circumstances of the petitioner (or group of petitioners in a regional center setting). Accordingly, it is possible for consistency to be achieved with density being spatially arranged in a pattern that accommodates different densities within the center.

21. COMMENT: Does regional center designation imply that an affordable housing obligation for the combined municipalities must be shared within the center among municipalities regardless of whether or how prior round obligations have been met? (1)

RESPONSE: Prior to the passage of P.L. 2008, c.46, the Commission encouraged this form of cooperation. The legislation eliminates Regional

Contribution Agreements and the Affordable Housing Partnership Program. However, OSG and COAH are presently negotiating a Memorandum of Understanding (MOU). It is anticipated that the MOU will provide for some flexibility in satisfying round three prospective need obligations for municipalities seeking plan endorsement and the flexibility should work to further regional planning efforts.

22. COMMENT: Does the presence of transit stops in a municipality mean that a petitioner must include plans and zoning for transit oriented mixed-use development in order to achieve plan endorsement? (1)

RESPONSE: The plan endorsement process requires community visioning to be an important aspect of the comprehensive planning process. Accordingly, the community's intentions are considered when developing a Memorandum of Understanding and Action Plan. Generally, a key aspect of State Plan consistency is creating a variety of housing choices and maximizing access to multi-modal transit. Mixed-use zoning in the core of a center is another recommended planning choice, including other aspects of form based code development, such as interconnectivity of roadways, pedestrian access to parks and public amenities and the like. However, the presence of transit stops alone is not determinative of any particular planning outcome.

23. COMMENT: The Guidelines imply that transfer of development rights (TDR) might be a mandatory aspect of plan endorsement and this would have a chilling effect on a municipality's decision on whether or not to pursue plan endorsement. (1)

RESPONSE: Each petition is considered based on the individual circumstances of the petitioner. Accordingly, it is not possible to determine in advance of plan endorsement whether TDR will be required or even feasible. If substantial developable farmland or natural resources exist in a municipality and it shares the goals of the State Plan to protect these resources, but substantial amounts of these resources remain and have not been protected through acquisition via easements or purchase of land in fee simple, then TDR might be required. The decision will be informed by the municipality's interest in preserving community character and equity of landowners.

The OSG seeks to integrate petitioner's vision into the plan endorsement process and will make every effort to work cooperatively with the petitioner and the various State agencies to advance agreed upon planning implementation mechanisms with appropriate incentives, flexibility and technical support.

Action Plan Implementation

24. COMMENT: The ability to amend the Action Plan is limited to being made for good cause shown at the discretion of the Executive Director. There is no appeal provision to allow for a desired amendment if the vision of the municipality changes within the timeframes set out in the Action Plan. There should be an appeal provision. (1)

RESPONSE: The Commission is sensitive to the planning process being vulnerable to political manipulation and has designed the rules to avoid same. The visioning process undertaken through plan endorsement has a 20-year horizon and subsequently should not change while the petitioner is completing the Action Plan.

Recommendation Report and Draft Planning and Implementation Agreement

25. COMMENT: Development of the PIA incorporates an appeal process, which should be considered for each step of the process. (1)

RESPONSE: This step does not involve an appeal process. Rather, it provides for the OSG staff to work cooperatively with the petitioner in preparing the PIA.

Period of Endorsement and Expired Centers

26. COMMENT: Centers previously designated by the Commission should not expire unless revoked for a cause or change of State policy through a subsequent adoption of a revised State Plan. The economic vitality of New Jersey requires predictability and certainty in its land use plans and policies. The expiration of designated centers is anathema to the clear policy direction needed for private capital investment decisions. It is these decisions that will ultimately signal the success or failure of the State Plan. (2)

A center designated by the Commission in 2001, and in accord with the State Planning rules in effect at that time was not due to expire.

However, later adopted plan endorsement rules, adopted in 2003, caused the center to expire in January 2008. In this case, it should not be necessary to disregard all the work that was accomplished and erase the development rights after achieving center designation. A more appropriate process would be to review what was approved and, if necessary, provide recommendations for changes with amendments, similar to the reexamination process of the MLUL. The current plan endorsement process does not take into consideration all the hard work and plans that have been completed. (4)

RESPONSE: The rules for the center designation process stipulated an expiration date for all centers. Individual expiration dates for each center were provided through a Commission resolution. The decision to allow the center designations to lapse was not under the control of the Commission. Numerous letters were sent to municipalities with expiring centers encouraging them to enter plan endorsement to maintain center designations without interruption.

27. COMMENT: The section on endorsement of certain areas within Pinelands municipalities should be clarified. The intention is to ensure that Pinelands municipalities, which have been certified by the Pinelands Commission as being in conformance with the Pinelands Comprehensive Management Plan are afforded the same status and are entitled to the same State agency benefits as municipalities outside the Pinelands, which have been granted plan endorsement by the Commission. For the same purpose, the rule should expressly equate Regional Growth Areas, Pinelands Towns and Pinelands Villages in certified Pinelands municipalities with centers designated by the Commission. (3)

RESPONSE: The Pinelands Protection Act of 1979 predates adoption of the State Planning Act. The Commission is required, pursuant to N.J.S.A. 52:18A-206, to rely upon the adopted rules of the Pinelands Commission in developing the State Plan. It follows that the Pinelands Comprehensive Management Plan, which requires Pinelands municipal master plans and land use ordinances to be certified by the Pinelands Commission, is necessarily consistent with the State Plan. Accordingly, it is inappropriate to impose State Plan consistency requirements on a statutorily mandated resource protection plan after-the-fact. However, this does not mean that Pinelands municipalities should be denied State agency benefits associated with comprehensive land use planning.

It is important that growth areas be given consistent treatment throughout the State, including evaluation of State infrastructure investments and access to State agency benefits. While the 1999 Memorandum of Agreement between the State Planning Commission and the Pinelands Commission deals, in part, with these issues, the Commission believes it is important for its rules to be explicit in this regard, so that Pinelands municipalities will be ensured consistent evaluation with respect to other growth areas and corollary access to State agency benefits to which they are entitled.

The Commission agrees with the commentor that access to State agency benefits should be made available to Pinelands municipalities, which have been certified by the Pinelands Commission without requiring pursuit of endorsement by the Commission under the State Plan. Likewise, Regional Growth Areas, Pinelands Villages and Pinelands Towns within certified Pinelands municipalities should have access to the same State agency benefits as designated centers outside the Pinelands. In order to address this comment, the Commission will propose to amend N.J.A.C. 5:85-7.21(b) in the Companion Proposal to reflect this present understanding of the status of certified Pinelands municipalities, including the growth areas and centers therein, as deemed equivalent to being endorsed.

Monitoring of Endorsed Plans

28. COMMENT: The Planning and Implementation Agreement is a contract between the State and a petitioner. Requirements that endorsed plans be revised to reflect changes in the State Plan that have not been specifically negotiated in the plan endorsement process violate the terms of that contract and should not be binding on an endorsed municipality if the State adopts a revised State Plan during the endorsement period. This could create the opportunity for zoning ordinances adopted to be consistent with the State Plan, as agreed during the plan endorsement process to be vulnerable to attack based on new provisions of the State Plan. There must be a provision in the rules to permit a petitioner to

negotiate a more favorable resolution or withdraw from plan endorsement. (1)

RESPONSE: The Commission agrees with this comment. The rule is being changed to reflect current practice of evaluating implementation of the agreement as opposed to reflecting later adopted State Plan requirements that differ from agreed upon implementation efforts. Section N.J.A.C. 5:85-7.22(b)2 has been deleted.

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.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[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:

"Action Plan" means an outline of the steps necessary for a petitioner to achieve consistency with the State Development and Redevelopment Plan and endorsement by the State Planning Commission. An Action Plan will provide timelines for the petitioner and relevant State agencies to complete required tasks; the relevant State agencies to review and evaluate petitioner submissions; and the relevant State agencies to provide or make available benefits that shall accrue to petitioner upon endorsement of the petition, as well as any conditions imposed on petitioner for obtaining said benefits.

"Center boundary" means the line between a center and its environs. The boundary is defined by physical features, such as rivers, roads, or changes in the pattern of development or by open space, environmentally sensitive features, or farmland, or combinations thereof.

"Certificate of eligibility" is a document issued by the Executive Director indicating that a petitioner has taken necessary preliminary steps to prepare for plan endorsement, entered into a Memorandum of Understanding and Action Plan with the State Planning Commission and has agreed to develop, adopt and implement plans that are consistent with the State Plan.

"Community visioning" is a process of involving the public, community and stakeholders in developing a vision statement to guide the future of a municipality, county, or regional entity.

"Consistency" or "consistent" means that the State Planning Commission determines that a municipal, county, regional, neighborhood or special resource area plan, or an amendment thereto, submitted for plan endorsement pursuant to N.J.A.C. 5:85-7 and endorsed by the State Planning Commission pursuant to N.J.A.C. 5:85-7.19, or a map amendment submitted for approval pursuant to N.J.A.C. 5:85-8 and endorsed by the State Planning Commission pursuant to N.J.A.C. 5:85-8.6 is the same as or has the same effect as the State Development and Redevelopment Plan.

"Critical environmental site" (CES) means an area generally 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.

"Endorsed plan" means a municipal, county, regional, neighborhood or special resource area plan, which has been submitted for consideration in a petition to the State Planning Commission, which petition has been approved as a result of a finding by the State Planning Commission that the plan is consistent with the State Development and Redevelopment Plan, pursuant to N.J.A.C. 5:85-7.

"Executive Director" means the Executive Director of the Office of Smart Growth.

"Map amendments" means the changes in the State Plan Policy Map initiated by the State Planning Commission in response to new data or that result from approval by the State Planning Commission of a petition for a map amendment pursuant to N.J.A.C. 5:85-8 or approval by the State Planning Commission pursuant to N.J.A.C. 5:85-7 of a petition for plan endorsement, which includes a proposed map amendment.

"Master Plan" means a comprehensive plan for the development of a county or municipality used to guide development and development regulations. Master Plans are adopted by municipal and county planning boards pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-28) and the County Planning Act (N.J.S.A. 40:27-1 et seq.), respectively.

"Memorandum of Understanding" means a contract between the State Planning Commission and a petitioner to enter into an Action Plan in order for the petitioner to take the steps needed to achieve consistency with the State Plan, in collaboration with the Office of Smart Growth and the relevant State agencies.

"Neighborhood Plan" means a plan submitted by an Urban Center municipality for plan endorsement that pertains specifically to a specific section of the municipality that has been identified as part of an overall strategy by the municipality for eventual endorsement of the municipal master plan and supporting plan elements for the entire municipality.

"Office of Smart Growth" means the Office in the Department of Community Affairs that staffs the State Planning Commission and provides planning and technical assistance as requested. The Office of Smart Growth serves the same functions as, and is the successor to, the Office of State Planning (N.J.S.A. 52:18A-201). The Office of Smart Growth website is www.njsmartgrowth.com.

"Petition" means either a formal request for plan endorsement or an amendment to an endorsed plan submitted by a municipality, a county, a regional planning entity or any grouping thereof to the State Planning Commission for review for consistency with State Development and Redevelopment Plan pursuant to N.J.A.C. 5:85-7 or a formal request by an entity other than a municipality, county or regional agency for a proposed map amendment in an area that is not subject of an endorsed plan pursuant to N.J.A.C. 5:85-8.

"Petition to amend" means a petition to amend either an endorsed plan, a Planning and Implementation Agreement or a prior center designation.

"Petitioner" means a municipality, county or regional planning entity, or any grouping thereof, seeking plan endorsement or an amendment to an endorsed plan pursuant to N.J.A.C. 5:85-7 or an entity other than a municipality, county or regional planning entity or any group thereof seeking an amendment to the State Plan Policy Map for an area that is not subject of an endorsed plan pursuant to N.J.A.C. 5:85-8.

"Plan" means the legally adopted planning documents of a governmental entity submitted for endorsement, as well as the various plan elements, planning studies, and documentation used to prepare or implement it.

"Plan Endorsement Advisory Committee" or "Advisory Committee" means a citizen-based committee appointed by the mayor or governing body to serve as liaison with the State, county, regional agencies and local officials throughout the process, to increase public awareness of and participation in the plan endorsement process, and to guide and assist the plan endorsement process, including participating in meetings at the Office of Smart Growth between the petitioner and the relevant State agencies.

"Plan endorsement process" or "plan endorsement" or "endorsement" means the process undertaken by a municipality, county or regional planning entity or any grouping thereof, to petition the State Planning Commission for a determination of consistency of the submitted plan with the State Development and Redevelopment Plan and wherein upon successful completion of requirements outlined in an Action Plan and Memorandum of Understanding, the State Planning Commission shall

make a determination that the submitted plan is consistent with the State Development and Redevelopment Plan, taking into account pertinent State agency statutes, rules, regulations, policies, and programs, and approve a petition for plan endorsement, wherein said plan shall then be considered endorsed.

"Plan implementation mechanisms" means zoning and land use ordinances, maps and schedules, natural resource inventories, capital improvement programs and any other relevant means used to implement plans.

"Planning and Implementation Agreement" means an agreement between the State Planning Commission and the petitioner that outlines how the petitioner proposes to achieve the goals and visions described in the endorsed plan and a schedule therefore and specifies benefits, such as technical and financial assistance that will be provided by State agencies to help advance the implementation of the plan.

"Prior center designations" or "previously designated centers" means a center designated pursuant to the State Planning Rules and in effect prior to May 17, 2004 that was not designated as part of an endorsed plan.

"Self-assessment" or "self-assessment report" means the report prepared by a petitioner to provide an overview and analysis of existing conditions of the petitioner, as well as a review of existing plans, and an assessment of the consistency of a petitioner's plans and implementation mechanisms with the goals, policies and strategies of the State Development and Redevelopment Plan.

"Special Resource Area" means an area or region, and defined in the State Development and Redevelopment Plan that are worthy of special protection due to unique characteristics or resources of Statewide importance, which are essential to the sustained wellbeing and function of its own region and other regions or systems – environmental, economic, and social – and to the quality of life for future generations.

"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.

"State agency benefit" means any benefit, such as technical assistance, financial assistance, priority consideration for grant awards, special grant funding, or other programs, provided by a relevant State agency, that is afforded to any petitioner granted a State Planning Commission determination of consistency of its petition for plan endorsement or issued a Certificate of Eligibility by the Executive Director.

"State Development and Redevelopment Plan" or "State Plan" means the plan prepared and adopted pursuant to the State Planning Act that sets forth Statewide planning policies and serves as the official blueprint for development and redevelopment in New Jersey. It is an expression of Statewide intent and articulates the planning policies that will be needed to reach the goals of the State Planning Act. Local application of these policies occurs through the Plan Endorsement process.

"State Opportunities and Constraints Assessment" means a preliminary written assessment of existing land use patterns, infrastructure availability and natural resources provided by the Office of Smart Growth to a petitioner that has submitted a municipal self-assessment report, based on input from relevant State agencies, and used to inform community visioning.

"State Planning Act" means the enabling legislation for establishing the State Planning Commission, creating the State Plan and delineating the duties of the State Planning Office, as codified at N.J.S.A. 52:18A-196 et seq.

"State Planning Commission" or "Commission" means the commission established under the State Planning Act, which has primary jurisdiction for the administration of developing and implementing the State Plan, coordinating planning among State agencies and other powers and duties as delineated in the State Planning Act.

5:85-1.6 Public participation

(a) Public participation shall include written or oral comments concerning cross-acceptance, plan endorsement, and map amendments presented before or during the public comment period at the meetings of the State Planning Commission or any committee thereof, and at any public hearings conducted pursuant to these rules. All applicable meetings shall be carried out in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., unless otherwise specified.

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

(d) At a minimum, the public may participate in plan endorsement through the following means:

1. Public comment to the Commission and its committees when a petitioner is seeking approval of a petition for plan endorsement, a petition to amend or a revocation of plan endorsement or of a designated center pursuant to N.J.A.C. 5:85-7;

2. (No change.)

3. Submission of written comments to the Executive Director at any time up to 30 days after any public hearing on a petition for plan endorsement, a petition to amend or a revocation of plan endorsement or of a designated center.

(e) (No change.)

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

(a) (No change.)

(b) Public notice requirements for the State Planning Commission or the Executive Director pursuant to N.J.A.C. 5:85-3, 4 and 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. Public notice of meetings or hearings shall be provided as follows:

Recodify existing 1. and 2. as i. and ii. (No change in text.)

iii. By written notice to all persons or organizations who have registered with the Office of Smart Growth to receive public notice of meetings or hearings concerning a particular matter pursuant to N.J.A.C. 5:85-1.6(b);

iv. By written notice to appropriate regional, State and Federal agencies;

v. If the public notice concerns a meeting regarding cross-acceptance pursuant to N.J.A.C. 5:85-3 or 4:

(1) By written notice to the negotiating entity;

(2) By written notice to the mayor, governing body, clerk and planning board of any municipality which is a subject of the negotiations; and

(3) By written notice to the board of chosen freeholders, county executive or administrator, if any, county clerk and county planning board if the county is not the negotiating entity;

vi. If the public notice concerns a meeting or a hearing regarding a petition filed pursuant to N.J.A.C. 5:85-7 or 8:

(1) By written notice to the petitioner;

(2) By written notice to the mayor, clerk and planning board of any municipality in which the property that is the subject of the petition is located if the municipality is not the petitioner; and

(3) By written notice to the board of chosen freeholders, county executive or administrator, if any, county clerk and county planning board of any county in which property that is subject of the petition is located if the county is not the petitioner; and

vii. (No change in text.)

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

i. (No change in text.)

ii. By written notice to the mayor, clerk and planning board of any municipality that adjoins the municipality or county required to provide the public notice;

iii. By written notice to the board of chosen freeholders, county executive or administrator, if any, county clerk and county planning board of any county that adjoins the municipality or county required to provide the public notice;

iv. By written notice to the Executive Director;

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 municipality;

vi. Counties shall provide written notice to the county clerk to disseminate to the county planning board and each authority, board, commission, committee and department involved in economic development, land use, infrastructure or resource protection in that county; and

vii. 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. Publication of meetings or hearings shall be performed as follows:

i. For municipal or county petitioners, by publishing a standard legal advertisement in each official newspaper of each municipality or county for which the petitioner is seeking plan endorsement, respectively;

ii. For regional petitioners, by publishing a standard legal advertisement in each official newspaper of each county within the region for which the petitioner is seeking plan endorsement, or if said region is within a single county, then by publishing a standard legal advertisement in each official newspaper of said county and each municipality within said region; or

iii. For special resource area petitioners, by publishing a standard legal advertisement in each official newspaper of each county within the special resource area for which the petitioner is seeking plan endorsement or if said special resource area is within a single county, then by publishing a standard legal advertisement in said county and each official newspaper of each municipality within said special resource area;

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

i. For municipal petitioners, by written notice to the mayor, governing body, planning board, and municipal clerk for dissemination to the environmental commission (if any) and each authority, board, commission, committee and department involved in economic development, land use, infrastructure or resource protection in the municipality for which plan endorsement is being sought and to the municipal clerk of adjoining municipalities for dissemination to the mayor, governing body and planning board in any municipality adjoining the municipal petitioner; or

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 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. Petitioners shall provide written notice to the Executive Director of public meetings or hearings held pursuant to N.J.A.C. 5:85-7.

(g) (No change.)

(h) Within five days of the Office of Smart Growth being informed that notice has been provided pursuant to (d) through (g) above; receiving a completed petition pursuant to N.J.A.C. 5:85-8; or the issuance of the

Executive Director's report on a petition submitted pursuant to N.J.A.C. 5:85-8, the Office of Smart Growth shall:

1.-3. (No change.)

(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 the public can comment orally at the hearing or submit written comments within a specified time period.

5:85-1.8 Severability clause

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

SUBCHAPTER 7. PLAN ENDORSEMENT

5:85-7.1 Introduction

(a) The State Planning Act includes the legislative finding that significant economies, efficiencies and savings in the development process would be realized by private sector enterprise and by public sector development agencies if the several levels of government would cooperate in preparing and adhering to sound and integrated plans. The Legislature further observed that a State Development and Redevelopment Plan needed to be designed for use as a tool for assessing suitable locations for infrastructure, housing, economic growth and conservation. The Legislature emphasized the importance of providing local governments in this State with the technical resources and guidance necessary to assist them in developing land use plans and procedures, which are based on sound planning information and practice, and to facilitate the development of local plans, which are consistent with State and regional plans and programs. To achieve the desired sound planning, the State Planning Act mandates that the Office of State Planning (predecessor to the Office of Smart Growth) provide advice and assistance to regional, county and local planning units.

(b) The State Planning Act specifically authorizes and requires the Office of State Planning to provide planning service to other agencies or instrumentalities of State government, to review the plans prepared by them, and to coordinate planning so as to avoid or mitigate conflicts between plans.

(c) The State Planning Act also requires the Office of State Planning to develop and promote procedures to facilitate cooperation and coordination among State agencies, regional entities, and local governments with regard to the development of plans, programs and policies, which affect land use, environmental, capital and economic development issues.

(d) The goals, policies, targets and indicators of the State Plan have been designed to address the concerns of the need to maintain beneficial growth, improve environmental quality, insure cost-effective delivery of infrastructure and other public services, improve governmental coordination, preserve the quality of community life and redevelop the State's major urban areas. Implementation of the State Plan is expected to achieve a balance among these concerns and to maximize the well-being for the State and its residents.

(e) This Plan Endorsement subchapter delineates the process developed by the Office of Smart Growth (successor to Office of State Planning) to increase the degree of consistency among municipal, county, regional and State agency plans and the State Plan and to facilitate implementation of these plans.

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> and shall be periodically updated.

(b) This subchapter applies to municipalities, counties, regional planning entities and other relevant planning entities seeking plan endorsement.

(c) The State Planning Commission may approve a petition for plan endorsement submitted by a petitioner based upon recommendations of the Office of Smart Growth, in consultation with relevant regional, State and Federal agencies and after consideration of public comment.

(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/>. Additional State agency benefits, as appropriate and feasible, shall be added to said document as they become available.

(e) State agencies shall make available certain State agency benefits, and planning assistance, agreed upon by the petitioner and relevant State agencies during the plan endorsement process, once the Office of Smart Growth has issued a Certificate of Eligibility.

5:85-7.3 Applicability

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

1. Municipal master plans and supporting plan implementation mechanisms submitted by the municipal governing body pursuant to this subchapter;

2. County master plans and supporting plan implementation mechanisms, submitted by the county governing body pursuant to this subchapter. Municipalities within counties that have been granted plan endorsement shall only qualify for State agency benefits associated with plan endorsement upon receiving plan endorsement of said municipality;

3. Regional plans for two or more municipalities sharing a common resource or planning theme submitted jointly by the affected municipal governing bodies and pursuant to this subchapter, provided that each affected municipality individually submit master plans and supporting plan implementation mechanisms. 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;

4. Special resource area plans as defined in the State Development and Redevelopment Plan submitted by the relevant regional planning entity;

5. Neighborhood plans in municipalities designated as Urban Centers by the State Planning Commission, submitted by the municipal governing body, provided that endorsement of any neighborhood plan is part of an identified overall strategy for eventual endorsement of the master plan and supporting plan elements for the entire municipality; and

6. Plans that previously received Initial Plan Endorsement from the Commission.

(b) Plans submitted in connection with a petition for initial plan endorsement that have been deemed complete by the Office of Smart Growth prior to *[(the effective date of this rule)]* ***April 20, 2009,*** shall, upon petitioner's request, be considered for initial plan endorsement under the prior State Planning Rules governing plan endorsement.

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

(a) Within five days of the Office of Smart Growth either receiving or issuing documents relating to plan endorsement pursuant to this subchapter, notice shall be posted and made by the Office of Smart Growth by:

1. Posting information concerning said documents on the Office of Smart Growth website;

2. Written notice concerning said documents to all persons or organizations who have registered with the Office of Smart Growth to receive public notice concerning a particular matter pursuant to N.J.A.C. 5:85-1.6(b); and

3. Written notice concerning said documents to appropriate regional, State and Federal agencies.

(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) The State Planning Commission shall call to its assistance staff of any regional, State or Federal agency, regional planning entity, county municipality, or political subdivision thereof, as it requires to implement the plan endorsement program.

(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. The benefits that will take effect once a petition for plan endorsement has been approved by the State Planning Commission pursuant to N.J.A.C. 5:85-7.19;

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

3. Those benefits that only apply in limited areas and the extent and reasons for those limitations.

(c) Each State agency member of the State Planning Commission, where appropriate and feasible, shall commit to making any modifications to State agency rules and programs that may be necessary to allow those benefits to accrue to the petitioner.

(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. Review and assess the plan submitted by a petitioner and provide a written analysis of those planning documents within the time periods provided in this subchapter;

2. Provide guidance and assistance with respect to programs available through each State agency or authority that may assist a petitioner to achieve plan endorsement and implementation of a petitioner's planning strategy in a manner that is consistent with and promotes the goals and policies of the State Plan;

3. Prepare a list of plan implementation mechanisms that may be required for a petitioner to implement an endorsed plan to effectuate land use patterns that are consistent with the State Plan and provide adequate and appropriate examples of each such mechanism. In the event that an appropriate example of a required plan implementation mechanism does not exist, the relevant State agency will work with the Office of Smart Growth and the petitioner to develop same, which can later be used as an example;

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 implementation agreement to achieve consistency with the goals, policies and strategies of the State Plan; and

5. Facilitate prioritized technical assistance and coordinated regulatory review of applications of entities with endorsed plans, where the application is determined to be consistent with the endorsed plan and the goals, policies and strategies of the State Development and Redevelopment Plan and takes into account relevant State agency policies, rules and regulations.

(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>. 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.

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

(a) A prospective 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:

1. A cover letter 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

3. A list of existing planning documents that have been submitted.

(b) The Office of Smart Growth shall schedule a pre-petition meeting within 30 days after a prospective petitioner satisfies the submission requirements.

(c) The Office of Smart Growth, members of relevant State agencies, and representatives for the petitioner 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 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 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 or a neighborhood plan, 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, 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, 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, the advisory committee shall be appointed by the regional planning entity or by the governing body of each affected municipality, depending on the nature of the plan, at a public meeting for which adequate notice has been provided. The appointment shall take effect upon approval of a resolution of the regional planning entity. The advisory committee shall consist of between five and 10 people including at least one representative of the regional planning entity, at least one Class IV member of a 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 of the petitioner and are not elected or appointed to any public position within said jurisdiction. The public members may not hold an appointed or elected position within the municipality or be employed by said regional planning entity.

5:85-7.8 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 self-assessment report shall include, as a minimum:

1. An analysis of existing conditions of the area, a review of existing plans, and an assessment of the consistency of a petitioner's plans and implementation mechanisms with the goals and policies of the State Plan;
2. An inventory of key characteristics of the relevant area, including: current population and trends, housing and economy trends, available public facilities and services, transportation, water and sewer infrastructure, and natural, cultural and recreational resources;
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, planning areas and centers shall be provided in digital GIS format;
4. Findings and conclusions regarding consistency with the State Plan, including an assessment of actions needed to achieve consistency, benefits petitioner seeks as a result of plan endorsement;
5. Any requests for waivers pursuant to N.J.A.C. 5:85-7.9, 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;
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.

(b) Petitioner shall hold a public meeting in which the advisory committee presents the findings and conclusions of the Self-Assessment Report to the relevant governing body or regional planning entity.

(c) Petitioner shall consider a resolution to pursue plan endorsement and authorize submission of the Self-Assessment Report to the Office of Smart Growth at a public meeting of the relevant governing body or regional planning entity.

(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 for all required public meetings;
2. A certified resolution from the governing body, or the regional planning entity for a regional plan or special resource area plan, approving the Self-Assessment Report; and
3. Copies of the meeting minutes of each public meeting at which the Self-Assessment Report was reviewed and adopted. The minutes shall include a summary of public comments and copies of written comments filed before or during the public meeting.

(e) Petitioner shall consider a resolution to pursue plan endorsement and authorize submission of the Self-Assessment Report to the Office of Smart Growth at a public meeting of the relevant governing body or regional planning entity.

(f) 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 for all required public meetings;
2. A certified resolution from the governing body, or the regional planning entity for a regional plan or special resource area plan, approving the Self-Assessment Report; and
3. Copies of the meeting minutes of each public meeting at which the Self-Assessment Report was reviewed and adopted. The minutes shall include a summary of public comments and copies of written comments filed before or during the public meeting.

(g) 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 for all required public meetings;
2. A certified resolution from the governing body, or the regional planning entity for a regional plan or special resource area plan, approving the Self-Assessment Report; and
3. Copies of the meeting minutes of each public meeting at which the Self-Assessment Report was reviewed and adopted. The minutes shall include a summary of public comments and copies of written comments filed before or during the public meeting.

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

5:85-7.9 Waivers

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

(b) A waiver may be granted 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) A petitioner may request a waiver for any provision of the plan endorsement process pursuant to (a) above, at any time. The request shall include a written justification to the Executive Director.

(d) Within 15 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) The Executive Director shall advise the State Planning Commission of a grant of any waivers pursuant to (a) through (d) above, at the next regularly scheduled Commission meeting following the decision.

(f) Any of the requirements of plan endorsement, other than N.J.A.C. 5:85-7.7, 7.8 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 the Executive Director and 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.

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

(a) After receipt of a complete Self-Assessment Report and supporting documentation, the relevant State agencies shall compare the findings and conclusions of the petitioner's Self-Assessment Report with the most up-to-date regional and Statewide data, evaluate the report with regard to development, infrastructure and natural resources, and make an assessment as to whether trend growth apparent in petitioner's report is sustainable based on the resources and infrastructure available in the municipality, region and State. The report shall be made in accordance with this section and any additional agreed upon standards as described in the plan endorsement guidelines and shall be provided to the Office of Smart Growth.

(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) The Office of Smart Growth may require a site visit in order to better understand the dynamics of a community, county or region, and to enable the Office of Smart Growth and the State agencies to visualize the attributes and challenges of the area based on first-hand knowledge.

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. 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 workshops held in public meetings in which information is gathered, interactive activities occur and a variety of materials relating to the community, such as maps, photos and resource inventories, are made available for review and discussion. The advisory committee shall, at least 10 days in advance of said workshops, 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; 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 regarding the vetting of the preliminary vision statement and post notice of the hearing on the official municipal website, if available, and in a conspicuous public place.

(b) A vision statement of community consensus of its intended future shall be prepared using the information gathered in the visioning process.

(c) A summary report identifying actions taken to meet minimum and agreed upon additional requirements for performing the visioning process.

(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 for all required public meetings and hearings;
2. A certified resolution from the governing body, or the planning entity for a county plan, regional plan or special resource area plan, approving the vision statement;
3. Copies of materials used in the visioning process;
4. A copy of the summary; 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.

5:85-7.12 Complete petition for plan endorsement

(a) In order for a petition for plan endorsement to be considered complete, the following minimum submission requirements must be met:

1. Submission requirements for pre-petition meeting pursuant to N.J.A.C. 5:85-7.6(a);

2. Existing planning documents, if not already submitted at the pre-petition meeting, and which have been determined to be relevant during the plan endorsement process by the Office of Smart Growth and the petitioner, such as:

i. For municipal petitioners or a group of municipal petitioners jointly seeking regional plan endorsement:

- (1) A land use plan, including an inventory and map, a zoning ordinance, including schedule and map, an inventory of pending significant development applications;
- (2) An agriculture retention and farmland preservation plan;
- (3) An economic development plan;
- (4) A housing and fair share element;
- (5) Any draft implementation mechanisms;
- (6) A natural resources inventory;
- (7) A conservation plan;
- (8) A transportation and circulation plan;
- (9) A community facilities plan;
- (10) An open space and recreation plan;
- (11) A wastewater quality management plan; and
- (12) A capital improvement plan;

ii. For county petitioners:

- (1) A land use plan, including an inventory and map and an inventory of pending significant development applications;
- (2) An agriculture retention and farmland preservation plan;
- (3) An economic development plan;
- (4) Any draft implementation mechanisms;
- (5) A natural resources inventory;
- (6) A conservation plan;
- (7) A transportation and circulation plan;
- (8) A community facilities plan;
- (9) An open space and recreation plan;
- (10) A wastewater quality management plan; and

(11) A capital improvement plan; or

iii. For special resource area petitioners:

- (1) A land use plan, including an inventory and map and an inventory of pending significant development applications;
- (2) A redevelopment plan;
- (3) An agriculture retention and farmland preservation plan;
- (4) An economic development plan;
- (5) A housing and fair share element;
- (6) Any draft implementation mechanisms;
- (7) A natural resources inventory;
- (8) A conservation plan;
- (9) A transportation and circulation plan;
- (10) A community facilities plan;
- (11) An open space and recreation plan;
- (12) A wastewater quality management plan; and
- (13) A capital improvement plan;

3. Submission requirements for the Self-Assessment Report pursuant to N.J.A.C. 5:85-7.8(a);

4. Submission requirements for the visioning statement pursuant to N.J.A.C. 5:85-7.11(d); and

5. 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.

(b) Upon receipt of a complete petition, the Executive Director shall post notice that the petition is complete in accordance with 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, 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, 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. The Statewide goals, policies and strategies;
2. The policies that apply to all planning areas;
3. The intentions for each relevant planning area;
4. The policy objectives for each relevant planning area;
5. If any change to a planning area boundary is proposed, the delineation criteria, intent and policy objectives for each planning area impacted by any boundary change;
6. The delineation criteria and intent for critical environmental sites and historic and cultural sites;
7. If there is a designated center or a center is proposed for designation, the policies for centers, including the center design policies, and environs; and

8. If a center is proposed to be designated or a change to the boundary of a designated center is proposed, the criteria for designating the type of center that is proposed to be designated or modified.

(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.

(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 from:

1. The petitioner;
2. The governing body of a municipality or county, which is not the petitioner; or
3. A total of at least 10 written requests from other governmental agencies, advocacy groups or individuals with a demonstrated interest in the petition.

5:85-7.14 Finding of consistency and recommendation report

(a) After receipt of a complete petition as defined in 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 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 days of receipt of the complete petition, containing detailed findings and conclusions to support the determination. The Executive Director may then issue a Certificate of Eligibility to petitioner pursuant to 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. Then, 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. If the State Planning Commission determines that the self-assessment and visioning process steps have been performed, or that a waiver of these requirements has been properly granted, and the terms and conditions of the draft Action Plan and draft Memorandum of Understanding are appropriate to achieve consistency, then the Commission shall execute the Memorandum of Understanding and direct the Executive Director to issue a Certificate of Eligibility pursuant to N.J.A.C. 5:85-7.16.

2. If the State Planning Commission determines that the self-assessment and visioning are not acceptable or that the terms and conditions of the draft Action Plan and draft Memorandum of Understanding are not appropriate to achieve consistency, then it shall revise the draft Action Plan so that it is appropriate to achieve consistency, execute the Memorandum of Understanding and direct the Executive Director to issue a Certificate of Eligibility pursuant to N.J.A.C. 5:85-7.16.

3. If the Executive Director fails to provide a draft Action Plan and draft Memorandum of Understanding to the State Planning Commission and petitioner within the 90-day consistency review period, then petitioner may directly petition the State Planning Commission for plan endorsement, pursuant to N.J.A.C. 5:85-7.18.

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 planning entity for a regional plan 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. Petitioner shall consider adoption of the Memorandum of Understanding and Action Plan at a public hearing of the relevant governing body or regional planning entity.

2. Municipal petitioners shall present the Memorandum of Understanding and Action Plan to both the planning board and governing body, which can be at the same or separate public hearings. The planning board and governing body may choose to hold a joint public hearing to consider adoption of the Memorandum of Understanding and Action Plan.

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 for all required public meetings and hearings;
- ii. A certified resolution from the governing body, or the regional planning entity for a regional plan or special resource area plan, approving execution of the Memorandum of Understanding;
- 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 a summary of public comments and copies of written comments filed before or during the public hearing(s); and

iv. A copy of the certified resolution authorizing execution of the Memorandum of Understanding, a copy of the executed Memorandum of Understanding, and a copy of the approved Action Plan.

(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, 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) An approved Action Plan may only be amended for good cause shown at the discretion of the Executive Director. Notice of any amendments to an Action Plan shall be provided to the Commission and the public pursuant to N.J.A.C. 5:85-1.7(h) and 7.4(b).

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;

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, respectively; and

3. To a petitioner that previously received Initial Plan Endorsement from the State Planning Commission and has entered into a Memorandum of Understanding and Action Plan, pursuant to N.J.A.C. 5:85-7.14 and 7.15, if necessary.

(b) Upon issuance of a Certificate of Eligibility, the State agencies shall coordinate planning and regulatory assistance and public investment

decisions, to the maximum extent possible in order to assist a petitioner to achieve endorsement and implementation of its plan.

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 to develop a draft Planning and Implementation Agreement, that outlines outstanding planning efforts, planning implementation mechanisms, 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 endorsement 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 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 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) If the subcommittee requests additional information from petitioner to make its determination, it may add an additional 45 days after receipt of the requested information, to prepare its recommendations on the petition.

(d) A petitioner may directly petition the Commission for plan endorsement under the following circumstances:

1. If the subcommittee fails to make a recommendation on the petition within 45 days of receipt of the Executive Director's Report or within 45 days of receipt of the requested additional information, or if the petitioner disagrees with the recommendation of the subcommittee; or

2. If the Office of Smart Growth fails to prepare a draft Action Plan and Memorandum of Understanding pursuant to N.J.A.C. 5:85-7.15.

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. Within 30 days of the Commission's action on a petition for plan endorsement, the Executive Director shall notify the petitioner in writing of the Commission's determination, findings and recommendations regarding the petition.

5:85-7.20 Extension of time requirements

(a) The Executive Director may extend, up to 90 days, the time allowed for State actions under this subchapter, in the event that the number of requests for plan endorsement or amendments thereto exceeds the resources of the Office of Smart Growth to process those requests.

(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 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).

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

(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.

(c) Urban complex strategic revitalization plans and corridor plans, including any centers, cores or nodes designated therein, approved prior to January 7, 2002, shall remain endorsed for a period of 10 years from January 7, 2002.

(d) Designated centers, cores and nodes approved prior to January 7, 2002, shall remain endorsed for a period of six years from January 7, 2002.

(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 *(a one-year period from the effective date of this rule)]* ***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 *[(the effective date of this rule)]* ***April 20, 2009***, an interim boundary shall be recommended by the Executive Director by *[(30 days of the effective date of this rule)]* ***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 *[(the effective date of this rule)]* ***April 20, 2009***, a map depicting the recommended interim boundary shall be provided to petitioner by *[(30 days of the effective date of this rule)]* ***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) The Executive Director shall periodically monitor the status and progress of endorsed plans and associated Planning and Implementation Agreements and previously designated centers, during the term of plan endorsement or prior center designation and shall forward all reports to the Commission.

(b) Municipalities, counties or other relevant planning entities having endorsed plans or previously designated centers shall provide annual reports to the Executive Director on the status of their Planning and Implementation Agreement efforts, unless otherwise agreed.

1. The annual report 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) At least 30 days prior to adoption of a new or significantly revised plan by municipalities, counties, regional agencies or planning authorities with endorsed plans or previously designated centers, copies of said new or significantly revised plans shall be provided to the Executive Director. Within 30 days after adoption of said new or significantly revised plans identified above, copies shall be provided to the Executive Director. The impacts of the new or significantly revised plan on the endorsed plan shall also be addressed in the next regularly scheduled annual report.

(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 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.

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

(a) If the Executive Director finds that a jurisdiction has made substantial changes to its endorsed plan or previously designated center, or has substantially violated the terms of its Planning and Implementation Agreement, so that its endorsed plan or previously designated center are inconsistent with the State Plan, the Executive Director shall:

1. Direct the Office of Smart Growth to conduct a public hearing in the affected jurisdiction to receive public comment on the status and progress of the jurisdiction's implementation of the endorsed plan or previously designated center. Minutes of this public hearing shall include a summary of public comments and copies of written comments filed before, or presented at, the public hearing;

2. Prepare and forward a monitoring report to the Commission recommending that plan endorsement or prior center designation be revoked;

3. Inform the petitioner, county representatives and the Commission in writing of the reasons therefore; and

4. Provide written notice of said recommendation to the relevant planning entity pursuant to N.J.A.C. 5:85-1.7(h) and post notice pursuant to N.J.A.C. 5:85-7.4.

(b) Within 60 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 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).

(d) Upon revocation by the Commission of an endorsed plan or previously designated center, all benefits and incentives made available to a petitioner shall be rendered null and void.

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 report is due.

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

1. A Self-Assessment Report, fully completed and signed by the petitioner or a duly authorized official, representing the petitioner;

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

3. A list of the documents being submitted;

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;

5. A certified resolution from each governing body or regional 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 planning entity to submit the petition and execute any requested or required amendment;

6. A copy of the meeting minutes of each public meeting or hearing at which the petition to amend was reviewed, and of the hearing during which the resolution approving the petition to amend was approved. The minutes shall include a summary of public comments and copies of written comments filed before or at the public meeting;

7. If any changes to the State Plan Policy Map are proposed, both the proposed and current State Plan Policy Map boundaries shall be depicted in digital files conforming to national standards of 1:24,000 scale accuracy and as provided in the Plan Endorsements Guidelines;

8. One hard copy in color and one electronic copy of the petitioner's proposed amendment;

9. A narrative description of public participation and planning coordination efforts used to prepare and submit the petition to amend;

10. A statement describing:

i. How the amendment promotes local, regional and State goals and objectives;

ii. How the amendment will impact public sector decisions;

iii. The reason(s) why the amendment cannot wait until the next revision of the State Plan; and

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

11. A report describing:

i. How the proposed amendment is consistent with the State Plan; and

ii. How the amendment helps the municipality, county, regional and State agencies achieve consistency with the State Plan and the endorsed plan or previously designated centers; or

iii. Why the current planning and implementation agreement item that is proposed to be changed cannot be implemented and why the proposed change will accomplish the same purpose as well or better as the original agreement.

(c) Within 60 days of the receipt of a petition to amend, the Executive Director shall provide written notice to the petitioner and the Commission, as to whether the petition complies with this subchapter.

(d) In cases where the Executive Director finds that the petition to amend has not been submitted in accordance with this subchapter, the Executive Director shall inform the petitioner in writing within 60 days after receipt of the petition to amend, of the deficiencies of the petition. If a revised petition to amend is not resubmitted within 90 days after receipt of the Executive Director's notice, or as otherwise agreed, or is submitted incorrectly, it will be considered withdrawn without prejudice and the petitioner so notified. The Executive Director shall provide notice of any such withdrawal 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) and post such information on the Office of Smart Growth website.

(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) 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) The relevant State and Federal agencies receiving copies of a petition to amend pursuant to (e) above shall provide comments to the Executive Director within 60 days.

(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(b).

(h) The Office of Smart Growth shall hold a public hearing if the Executive Director receives a written request for such a hearing from the petitioner, the governing body of a municipality or county, which is not the petitioner or a total of at least 10 written requests from other governmental agencies, advocacy groups or individuals with a demonstrated interest in the petition within 10 days of the Office of Smart Growth providing notice pursuant to (e) above that a petition to amend has been submitted in accordance with this subchapter.

(i) In cases where the Executive Director determines that a petition to amend is submitted in accordance with this section, the Executive Director shall determine within 90 days after the conclusion of the State and Federal agency review period whether the subject of the petition to amend is consistent with the State Plan.

(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) and forward the report to the Commission, the petitioner and post the report on the Office of Smart Growth website.

1. If the Executive Director determines that the subject of the petition to amend is consistent with the State Plan, the Executive Director shall recommend that the petition to amend be approved by the Commission.

2. If the Executive Director determines that the subject of the petition to amend 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 subject of the petition to amend consistent with the State Plan, or recommend that the petition to amend be denied by the Commission.

3. If the Executive Director fails to submit a recommendation to the Commission concerning a petition to amend that has been determined to have been submitted pursuant to this subchapter within the 90-day time period set forth in (i) above, the petitioner may request that the Commission take direct action on the petition.

(k) The Commission and any duly authorized subcommittee shall review the recommendation of the Executive Director, that the petition to amend was submitted in accordance with this subchapter, and the determination as to whether the subject of the petition to amend is consistent with the State Plan.

(l) Within 60 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) above, notify the petitioner in writing of the Commission's determination, findings and recommendations regarding the petition to amend.

(n) Within 45 days of the Commission determining whether the petition to amend was submitted in accordance with this section, and is consistent with the State Plan, the Executive Director shall post notice of said determination pursuant to N.J.A.C. 5:85-7.4.

APPENDIX

OFFICE OF SMART GROWTH – NEW PLAN ENDORSEMENT FLOW CHART

