
**NEW JERSEY STATUTES AND REGULATIONS
LINKED TO THE STATE PLANNING ACT**

Document # 191



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1. INTRODUCTION

In October 1995, the Office of State Planning published Document #112, entitled “New Jersey Statutes and Regulations Linked to the State Planning Act.” It summarized statutes and regulations that reflected search terms relating to the State Planning Act and the State Development and Redevelopment Plan (State Plan). That document encompassed six titles and was 19 pages long.

This document is an update to that earlier research, and includes statutes and regulations having direct connections to the State Planning Act. This version has a number of enhancements. First, citations have been provided for enabling legislation for the case where regulations but not the associated statutes include relevant search terms. The added citations give background on the legislative purpose that the regulations were adopted to implement. Second, occasional notes provide references to interpretive documents such as relevant court decisions and Executive Orders. In addition, citations have been provided for proposed rules that include relevant search terms that have been published in the New Jersey Register but not yet adopted. Finally, this update includes two additional chapters. The first is a compilation of Executive Orders that have been issued since the State Planning Act was enacted that relate to oversight and administration of State agency land use decisions. The second is an acronym index.

Statutes

The research for this document included a series of LEXIS[®] database searches. First, the New Jersey legislative statutes listed in the New Jersey Statutes Annotated (N.J.S.A.) was searched for any of the following terms: “State Planning Act,” “State Development and Redevelopment Plan,” “State Planning Commission,” “Planning Area 1,” “Designated Center,” “Plan Endorsement,” “Office of State Planning,” or “Office of Smart Growth.”

Not accounting for redundancies, the search, conducted by the Office for Planning Advocacy in March 2011, generated a total of 186 hits. Among these hits, 29 are in the State Planning Act itself. Of the remaining 157 citations, 10 make no reference to one or more of the search terms. Accordingly, 147 citations were found that include one or more of the search terms.

Regulations

Next, the research for this document included a series of LEXIS[®] database searches of State agency rules and regulations listed in the New Jersey Administrative Code (N.J.A.C.) using the same search terms as described above.

Not accounting for redundancies, the search, conducted by the Office for Planning Advocacy in March 2011, generated a total of 425 hits. Among these hits, 163 were in the State Planning Rules adopted by the State Planning Commission. In addition, there are 30 citations that do not specifically cite any of the search terms. Accordingly, 232 citations were found that include one or more of the search terms.

The search identified 19 instances where regulations, but not enabling legislation, included relevant search terms. Citations to the enabling legislation for these regulations have been added to give a reader an understanding of the statutory basis for the regulations.

Executive Orders

Over the years there have been a number of initiatives to organize the executive branch more effectively to address one or more issues that relate to the land use issues contemplated in the State Plan. This document includes a new chapter with a listing of relevant Executive Orders, adopted since the State Planning Act was enacted, listed chronologically including number, year and topic. A LEXIS[®] search of Executive Orders by topic was performed using the same search terms as described above. Only one Executive Order had a topic that included any of the search terms listed above. The search was then expanded to include broader search terms, including: “Smart Growth,” “Planning,” “Policy,” “Land Use,” “Strategic,” “Economic Development,” and “Urban.” In addition, the Office for Planning Advocacy, through its work regarding smart growth, and in liaising with relevant State agencies involved in land use planning issues, is aware of additional Executive Orders that have relevance. These Executive Orders have been added to the search results as well.

Other

A review of the research results shows that there is a lack of consistency among different agencies on the use of the search terms. For example, in N.J.A.C. 19:31-3.2, the State Development and Redevelopment Plan is referred to as the “State Redevelopment Plan.” To the extent terms relating to the program that are expressed in a different form than the search terms are known, such linkages have also been added to the document. It is possible that there are a number of additional linkages that were not found in this search due to this lack of consistency. In order to assure this document is as comprehensive as possible, relevant State agencies have been asked to review and provide missing information to supplement the search results.

Conclusion

Since Document #112 was published, there has been a significant increase in linkages of both statutes and programs to the State Plan. In addition, there has been ample discussion as to the lack of a coordinated approach of the various State agencies in their decision making as it impacts land use and infrastructure investments.

2. AGRICULTURE

2.1. Agriculture Retention and Development Act

2.1.1. Statute

Citation: N.J.S.A. 4:1C-11 et seq. at 43.1
Title 4. Agriculture and Domestic Animals
Chapter 1C. Agriculture Retention And Development Act
Subchapter 43.1. Farmland preservation planning incentive grant program
L. 1999, c. 180, s. 1, Eff. Aug. 12, 1999.
“a. There is established in the State Agriculture Development Committee a farmland preservation planning incentive grant program, the purpose of which shall be to provide grants to eligible counties and municipalities for farmland preservation purposes as authorized pursuant to this act..”

Explanation: This Act establishes a farmland preservation incentive grant program in the SADC to provide State financial assistance to local and county governments seeking to purchase farmland easements to maintain the viability of the farming industry in the State.

2.1.2. Farmland Preservation Incentive Grant Program Rules

Citation: N.J.A.C. 2:76-17.4
Title 2. Agriculture
Chapter 76. State Agriculture Development Committee
Subchapter 17. County Planning Incentive Grants
Section 4. County comprehensive farmland preservation plan
R. 2010 D. 047, Eff. January 15, 2010
41 N.J.R. 1300(a), 42 N.J.R. 587(a)

“(a) A comprehensive farmland preservation plan shall include, at a minimum, the following components...A complete description of the land use planning context for farmland preservation initiatives including identification of the county's adopted ADA, and **consistency of the county's farmland preservation program** with local, county, regional, and **State planning** and conservation efforts...”

Explanation: These rules set out the process SADC performs to evaluate

applications for Planning Incentive Grants to assist counties in funding acquisition of qualified farmland. In order to qualify a county farmland preservation plan must be adopted and include a description of consistency of the plan with State planning and conservation efforts.

2.1.3. Farmland Preservation Incentive Grant Program Rules

Citation: N.J.A.C. 2:76-17A.4
Title 2. Agriculture
Chapter 76. State Agriculture Development Committee
Subchapter 17A. Municipal Planning Incentive Grants
Section 4. Municipal comprehensive farmland preservation plan
R. 2010 D. 047, Eff. January 15, 2010
41 N.J.R. 1300(a), 42 N.J.R. 587(a)

“(a) A comprehensive farmland preservation plan shall include, at a minimum, the following components. ...A description of the land use planning context for the municipality's farmland preservation initiatives including the following...Consistency with municipal, regional and State land use planning and conservation efforts...”

Explanation: These rules set out the process SADC performs to evaluate applications for Planning Incentive Grants to assist municipalities in funding acquisition of qualified farmland. In order to qualify a municipal farmland preservation plan must be adopted and include a description of consistency of the plan with State planning and conservation efforts.

2.2. N.J. State TDR Bank Act

2.2.1. Statute

Citation: N.J.S.A. 4:1C-49 et seq. at 51
Title 4. Agriculture and Domestic Animals
Chapter 1C. State Transfer of Development Rights Bank Act
L. 1993, c. 339, s. 3; Eff. Dec. 27, 1993

“There is established in the Executive Branch of the State Government a public body corporate and politic, with corporate succession, to be known as the State Transfer of Development Rights Bank...governed by a board of directors consisting of ten voting members, or the designees thereof, as follows: the Secretary of Agriculture, who shall serve as chairperson and who shall vote only

in the event there is a tie vote; the State Treasurer; the Commissioner of Environmental Protection; the Commissioner of Transportation; the Commissioner of Banking; the Commissioner of Community Affairs; the President of the State Board of Agriculture; the Chairman of the *State Planning Commission*...”

Explanation: This Act established the State Transfer of Development Rights Bank Board in but not of the Department of Agriculture and sets forth the membership of the board, the terms of office for the members, duties of the board, etc. One ex officio member of the TDR Bank Board is the Chairman of the State Planning Commission or the Chairman’s designee.

2.2.2. TDR Planning Assistance Grant Rules

Citation: N.J.A.C. 2:77-3.1
Title 4. Agriculture and Domestic Animals
Chapter 77. Transfer of Development Rights
Subchapter 3. Standards for Board's Purchase of Development Potential, Issuance of Matching Funds for Purchase of Development Potential, and Guarantee of Loans
Section 1. Board's review of ordinance and determination of viability
R. 2006 D. 268; Eff. July 17, 2006
38 N.J.R. 363(a); 38 N.J.R. 3009(a)

“Prior to purchasing development potential, providing matching funds for the purchase of development potential, or guaranteeing loans in a municipality that has adopted a development transfer ordinance, the Board shall determine whether the ordinance is viable...To be deemed a viable development transfer ordinance pursuant to this subchapter...Compliance shall be determined upon a showing that the municipality has...:Received approvals from the *State Planning Commission* required by N.J.S.A. 40:55D-137 et seq. and any rules promulgated thereunder,...Received recommendation of adoption of ordinance by the respective county planning board...or approval of *Office of Smart Growth* pursuant to N.J.S.A. 40:55D-150 through 152...”

Explanation: These rules set out the basis for the TDR Bank Board to provide financial support for purchases of development potential or loan guarantees in a TDR program. The TDR ordinance must be deemed viable, and part of that determination is whether the municipality has sought initial plan endorsement.

Citation: N.J.A.C. 2:77-7.4

Title 4. Agriculture and Domestic Animals
Chapter 77. Transfer of Development Rights
Subchapter 7. Planning Assistance Grants
Section 4. Application requirements
R. 2006 D. 268, Eff. July 17, 2006
38 N.J.R. 363(a); 38 N.J.R. 3009(a)

“...A municipality applying to the Board for a planning assistance grant shall submit an application...containing all of the following...
A statement explaining whether the municipal master plan is consistent with the *State Development and Redevelopment Plan*...
The Board shall send a copy of the application and accompanying documents to the *Office of Smart Growth* for a 45-day review and comment period.”

Explanation: These rules set out the requirements for municipalities seeking planning assistance grants from the TDR Bank Board. One requirement is a statement explaining whether the municipal master plan is consistent with the State Plan. In addition, the OSG is sent the application and support materials for review prior to the Board making a decision on the application.

Citation: N.J.A.C. 2:77-7.7
Title 4. Agriculture and Domestic Animals
Chapter 77. Transfer of Development Rights
Subchapter 7. Planning Assistance Grants
Section 7. Award of funding, disbursements, accounting and recordkeeping requirements
R. 2006 D. 268, Eff. July 17, 2006
38 N.J.R. 363(a); 38 N.J.R. 3009(a)

“...Fifty percent of the awarded amount shall be disbursed upon submission of the TDR ordinance and associated elements to the *State Planning Commission* as a part of a municipality's initial petition for *plan endorsement* by the *State Planning Commission*...or as an amendment to a previously approved petition...”

Explanation: These rules set out the conditions of the TDR Bank Board in disbursing grant funding for a municipality that was awarded a grant to prepare a TDR program and ordinance. A condition of receiving full payment is submission of the TDR program materials, including the required master plan elements and the TDR ordinance to the SPC as part of a petition for plan endorsement.

2.3. New Jersey Aquaculture Development Act

Citation: N.J.S.A. 4:27-20
Title 4. Agriculture and Domestic Animals
Chapter 27. Aquaculture component for model planning and zoning ordinances
L. 1997, c. 236, s. 20

“The *Office of State Planning*...in consultation with the Pinelands Commission as it affects the pinelands area..., shall develop...an aquaculture component for model planning and zoning ordinances...”

Explanation: This Act was established to support aquaculture, which the Legislature identified as the fastest growing segment of agriculture in the nation. Based on findings in an Aquaculture Development Plan, which was prepared by a task force, the Legislature found that legislative and regulatory obstacles are major impediments to aquaculture growth and development in New Jersey. It called for the plan to be implemented. In addition, the Legislature identified the need for achieving the interdepartmental cooperation necessary to developing aquaculture.

Note: E.O. 104 (1993)

3. CONSERVATION

3.1. An Act Concerning Expedited Permits

Citation: N.J.S.A. 13:1D-144 at 144
Title 13. Conservation and Development - Parks and Reservations
Chapter 1D. Department of Environmental Protection (DEP)
Part IX. Smart Growth
L. 2004, c. 89, s. 4, Eff. July 9, 2004

"Smart growth area" means an area designated pursuant to P.L. 1985, c. 398 (C. 52:18A-196 et seq.) as **Planning Area 1** (Metropolitan), Planning Area 2 (Suburban), a **designated center**, or a designated growth center in an endorsed plan..."

Explanation: This Act is enabling legislation to: create an expedited permit review process in growth areas, create a Division of Smart Growth in a series of State agencies and establish the position and role of the Smart Growth Ombudsman. Chapter 1D relates to creation of the Division of Smart Growth within the DEP and defines smart growth areas to which the Act pertains, using, among others, State Plan designations.

Note: E.O. 45 (2005)

3.2. Environmental Aid Act

3.2.1. Statute

Citation: N.J.S.A. 13:1H-1 et seq. at 5
Title 13. Conservation and Development - Parks and Reservations
Chapter 1H. Local Environmental Agencies; State Aid
L.1972, c. 49, s. 1, Eff. June 1, 1972

"Local environmental agencies shall submit applications for environmental aid to the department. The application shall include such information as the department may require..."

Explanation: Municipalities that establish local Environmental Commissions may obtain a grant of State funding up to \$2,500 to aid in performance of their activities.

3.2.2. Matching Grants Program for Local Environmental Agencies Rules

Citation: N.J.A.C. 7:6-1.3
Title 7. Environmental Protection
Chapter 6. Office of Environmental Services Matching Grants
Program for Local Environmental Agencies
Subchapter 1. General Information
R. 2006 D 215, Eff. May 15, 2006
37 N.J.R. 4717(a), 38 N.J.R. 2687(b)

““Statewide Development and Redevelopment Plan” means the Plan adopted pursuant to the *State Planning Act*, N.J.S.A. 52:18A-196, et seq. The plan in effect as of January 5, 1998 was adopted on June 12, 1992.”

Explanation: The definitions for this rule regarding grants for local environmental commissions include one for the State Plan.

Citation: N.J.A.C. 7:6-3.2
Title 7. Environmental Protection
Chapter 6. Office of Environmental Services Matching Grants
Program for Local Environmental Agencies
Subchapter 3. Allocation of ESP Matching Grant Funding
R. 2006 D. 215, Eff. May 15, 2006
37 N.J.R. 4717(a), 38 N.J.R. 2687(b)

“...Ranking of grant applications...All applications for ESP Matching Grants in a given year shall, for the purpose of determining priority for funding, be ranked on the basis of the degree to which the proposed project:... Will document and protect environmental resources that are of particular importance to local governments in implementing the *State Development and Redevelopment Plan*...”

Explanation: These rules for ranking applications regarding grants for local environmental commissions include a determination of the degree the proposed project will protect environmental resources that are of particular importance in implementing the State Plan.

3.3. Aid for Urban Environmental Concerns Act

3.3.1. Statute

Citation: N.J.S.A. 13:1H-8 et seq. at 9
Title 13. Conservation and Development – Parks and Reservations

Chapter 1H. Local Environmental Agencies; State Aid
L. 1979, c. 56, s. 1, Eff. March 27, 1979

“The Legislature hereby finds and declares that urban communities, where the high population and building densities, aged housing stock, economic decline and incidence of poverty present special problems, have unique environmental concerns; and that State assistance can help environmental agencies meet such concerns.”

Explanation: The DEP is authorized to provide grants to eligible urban municipalities, including those referred to in the Depressed Rural Centers Aid Act (N.J.A.C. 52:27D-162), for projects regarding environmental concerns in urban areas.

3.3.2. Aid for Urban Environmental Concerns (AUEC) Grants Program Rules

Citation: N.J.A.C. 7:6A-1.3
Title 7. Environmental Protection
Chapter 6A. Aid for Urban Environmental Concerns Matching Grants Program for Environmental Agencies
Subchapter 1. General Information
R. 2006 D. 215, Eff. May 15, 2006
37 N.J.R. 4717(a); 38 N.J.R. 2687(b)

““Statewide Development and Redevelopment Plan” means the Plan adopted pursuant to the *State Planning Act*, N.J.S.A. 52:18A-196, et seq. The plan in effect as of January 5, 1998 was adopted on June 12, 1992...”

Explanation: These rules are for administering the Environmental Services Program (ESP) in the Department of Environmental Protection for the Aid for Urban Environmental Concerns (AUEC) Matching Grants Program for Environmental Agencies, providing for the award of grants to such agencies. The rules include a definition for the State Plan.

3.4. New Jersey Green Acres Land Acquisition Act of 1961

3.4.1 Statute

Citation: N.J.S.A. 13:8A-1 et seq. at 2
Title 13. Conservation and Development – Parks and Reservations
Chapter 8A. Green Acres Land Acquisition
Subchapter 2. Legislative findings

L.1961, c. 45, p. 478, 1, Eff. June 3, 1961

“The provision of lands for public recreation and the conservation of natural resources promote the public health, prosperity and general welfare and is a proper responsibility of government...Lands now provided for such purposes will not be adequate to meet the needs of an expanding population in years to come... New Jersey must act now to acquire and to assist local governments to acquire substantial quantities of such lands as are now available and appropriate for such purposes...such sum will be available by the sale of bonds authorized by the New Jersey Green Acres Bond Act of 1961, if the same be approved by the people...In acquiring lands and making grants to assist local units to acquire lands the commissioner shall: seek to achieve a reasonable balance among all areas of the State in consideration of the relative adequacy of area recreation and conservation facilities...give due consideration to co-ordination with the plans of other departments of State Government with respect to land use or acquisition...”

Explanation: This Act establishes the program in the DEP that identifies land based resources, such as watershed lands and farmland, that it is in the public’s best interests to protect, and authorizes it to use revenues from the sale of bonds for this purpose.

3.4.2. Green Acres Program Rules

Citation: N.J.A.C. 7:36-2.1
Title 7. Environmental Protection
Chapter 36. Green Acres Program
Subchapter 2. Definitions
Section 1. Definitions
R. 2006 D. 23, Eff. January 3, 2006
37 N.J.R. 2364(a); 3764(a), 38 N.J.R. 155(a)

“...**“Plan Endorsement”** means approval of a municipality's planning documents, including all elements required by the Department of Environmental Protection, by the **State Planning Commission** pursuant to the State Planning rules at N.J.A.C. 5:85-1 et seq. A local government unit can petition for initial **plan endorsement** or advanced **plan endorsement** under the **Plan Endorsement** Guidelines available from the **State Planning Commission's Office of Smart Growth**...
"State Plan" means the New Jersey **State Development and Redevelopment Plan**, adopted under the **State Planning Act**...”

Explanation: The Green Acres program rules include definitions for plan endorsement and the State Plan.

Citation: N.J.A.C. 7:36-4.1
Title 7. Environmental Protection
Chapter 36. Green Acres Program
Subchapter 4. Local Government Unit Acquisition Projects: Project Eligibility, Conditions, and Limitations
Section 1. General provisions and funding policies
R. 2006 D. 23, Eff. January 3, 2006
37 N.J.R. 2364(a); 3764(a), 38 N.J.R. 155(a)

“...Each year, the Department shall establish a maximum funding limit per project or per applicant based on total funding requests, available funds, project priorities...and such considerations as the local government unit's progress in expending any approved Green Acres funding; geographic distribution of applications; achievement of an approved petition for *plan endorsement*...”

Explanation: One of the criteria used by the Green Acres program for applicants to qualify for grant funding is the relationship of the project to the policies in the State Plan.

Citation: N.J.A.C. 7:36-7.1
Title 7. Environmental Protection
Chapter 36. Green Acres Program
Subchapter 7. Local Government Unit Acquisition Projects: Award Criteria; Application Ranking and Evaluation
Section 1. Project award criteria
R. 2006 D. 23, Eff. January 3, 2006
37 N.J.R. 2364(a); 3764(a), 38 N.J.R. 155(a)

“...The Department may assign a maximum of 15 points based on... Green Acres shall evaluate the degree to which...The project is consistent with the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; the New Jersey Statewide Comprehensive Outdoor Recreation Plan; and local and county land use plans,...and whether proof of an approved petition for *plan endorsement* by the *State Planning Commission*...has been provided...”

Explanation: One of the criteria used by the Green Acres program in ranking applicants for grant funding is consistency of the acquisition project with the State Plan.

Citation: N.J.A.C. 7:36-13.1
Title 7. Environmental Protection
Chapter 36. Green Acres Program
Subchapter 13. Local Government Unit Development Projects:
Award Criteria, Application Ranking, Approval Procedures;
Preliminary Assessment Report
Section 1. Project award criteria
R. 2006 D. 23, Eff. January 3, 2006
37 N.J.R. 2364(a); 3764(a), 38 N.J.R. 155(a)

“...The Department may assign a maximum of 15 points based on the extent to which public involvement and support in the planning process for a project...has been sought...Green Acres shall evaluate the degree to which...the project is consistent with the State Plan...and local and county land use plans, especially open space and recreation elements thereof, as demonstrated in excerpts from or specific references to such plans in the project application; and whether proof of approved petition for advanced *plan endorsement* by the *State Planning Commission*...zero to 10 points....”

Explanation: One of the criteria used by the Green Acres program in ranking applicants for grant funding is whether they have been granted advanced plan endorsement.

Citation: N.J.A.C. 7:36-26.9
Title 7. Environmental Protection
Chapter 36. Green Acres Program
Subchapter. Standards and Procedures for Commissioner and State House Commission Approval of the Disposal or Diversion of Funded or Unfunded Parkland
N.J.S.A. 13:8A-1 et seq., 13:8A-19 et seq., 13:8A-35 et seq. and 13:8C-1 et seq.; and P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; P.L. 1978, c.118; P.L. 1983, c.354; P.L. 1987, c.265; P.L. 1989, c.183; P.L. 1992, c.88; P.L. 1995, c.204; and P.L. 1999, c. 152.

“...Major disposals or diversions of parkland; pre-application requirements...Prior to submitting an application for approval of a major disposal or diversion of parkland, a local government unit or nonprofit shall contact Green Acres to request information on the Department's rules pertaining to the proposed disposal or diversion of parkland and the related procedural requirements and to request a pre-application conference with Green Acres... A description of how the proposed project for which the diversion or disposal of parkland is proposed, and the proposed compensation, will support the *State Development and Redevelopment Plan* Goals (including, but not limited to, conserving the State's natural resources and systems, and

preserving and enhancing areas with scenic, open space and recreational value), and will be consistent with the *State Development and Redevelopment Plan's* Policy Map and the Statewide Policies (including, but not limited to, those directed to scenic resources, open lands and natural systems, planning regions established by statute, coastal resources, special resource areas and design, threatened and endangered species, habitat for threatened and endangered species, water quality protection and stormwater control)..."

Explanation: The Green Acres Program regarding disposal or diversion of parkland evaluates whether the project and proposed compensation will support the State Plan goals as well as whether they will be consistent with the Policy Map and Statewide policies.

3.5. Garden State Preservation Trust Act

3.5.1. Statute

Citation: N.J.S.A. 13:8C-1 et seq. at 25
Title 13. Conservation and Development - Parks and Reservations
Chapter 8C. Garden State Preservation Trust
Subchapter 25. Biennial progress report to Governor, Legislature by the trust
L. 1999, c. 152, s. 25, Eff. June 30, 1999

“Within one year after the date of enactment of this act, and biennially thereafter until and including 2008, the Garden State Preservation Trust, after consultation with the Department of Environmental Protection, the State Agriculture Development Committee, the New Jersey Historic Trust, the Pinelands Commission, the Highlands Water Protection and Planning Council, and the *Office of State Planning* in the Department of Community Affairs, shall prepare and submit to the Governor and the Legislature a written report...”

Explanation: This Act is enabling legislation to establish the Garden State Preservation Trust in but not of the DEP. This chapter concerns a report that must be submitted each year by the DEP to the Legislature regarding progress on achieving the goals of the Constitution with respect to acquisition of land and development of land for recreational and conservation purposes and preservation of farmland and historic properties. The report is also required to provide recommendations with respect to any legislative, administrative or local action required to insure goals of the Act be met in the future. It

is also to identify areas in the Open Space Master Plan where protection is needed to assure safe drinking water supply and a proposed expenditure plan. The Office of State Planning is to be consulted in preparation of this report.

Citation: N.J.S.A. 13:8C-25.1
Title 13. Conservation and Development - Parks and Reservations
Chapter 8C. Garden State Preservation Trust
Subchapter 25. Biennial progress report to Governor, Legislature by the trust
L. 2002, c. 76, s. 5, Eff. Aug. 29, 2002

“...the Department of Environmental Protection, in consultation with the *Office of State Planning*..., the Pinelands Commission, and the Highlands Water Protection and Planning Council, shall prepare and submit to the Governor and the Legislature an Open Space Master Plan...”

Explanation: This chapter of the Act involves DEP’s preparation of the State’s Open Space Master Plan for submission to the Governor and Legislature. The plan is to indicate land that it recommends be acquired including a proposed schedule and expenditure plan for the next reporting period. The Office of State Planning, among others, is to be consulted in preparation of the plan. The plan is used as a basis for expenditure of Constitutionally dedicated money and is to reflect geographic diversity to the greatest extent possible.

3.5.2. Garden State Preservation Trust Rules

Citation: N.J.A.C. 5:100-3.2
Title 5. Community Affairs
Chapter 100. Historic Preservation Grant Program
Subchapter 3. Allocation Of Historic Preservation Grant Funds
Section 2. Criteria for review and ranking of applications for historic preservation grants
R. 2009 D. 23, Eff. December 10, 2008
40 N.J.R. 4271(a), 41 N.J.R. 127(b)

“(a) To determine priority for construction grant funding, all applications for eligible historic preservation projects in a given grant round shall be ranked on the basis of the following competitive criteria...Significance of resource, which shall involve consideration of the degree to which a property is historically, archaeologically, architecturally or culturally significant in the State, under the evaluation criteria for the New Jersey and National Registers of

Historic Places;...the relationship of the proposed project to other State, county, municipal, or organizational planning initiatives or programs which will aid community revitalization, protect and preserve the built or natural environment, or improve or promote heritage education and tourism including the policies set forth in the New Jersey *State Development and Redevelopment Plan* and subsequent policies such as, Statewide Policy No. 9 (Historic, Cultural and Scenic Resources)...”

Explanation: One of the criteria used by the Garden State Preservation Trust for historic preservation projects to qualify for grant funding is the relationship of the project to the policies in the State Plan.

Citation: N.J.A.C. 5:101-3.2
Title 5. Community Affairs
Chapter 100. Historic Preservation Trust Fund Grant Program
Subchapter 3. Allocation Of Historic Preservation Grant Funds
Section 2. Criteria for review and ranking of applications for historic preservation grants
R. 2011 D. 024, Eff. December 14, 2010
42 N.J.R. 1455(a), 43 N.J.R. 173(d)

“To determine priority for historic site management grants, all applications for eligible historic preservation projects in a given grant round are to be ranked on the basis of the criteria...above, and the following competitive criteria...The relationship of the proposed project to other State, county, municipal, or organizational planning initiatives or programs which will aid community revitalization, protect and preserve the built or natural environment, or improve or promote heritage education including the policies set forth in the New Jersey *State Development and Redevelopment Plan*, Statewide Policies No. 9 (Historic, Cultural and Scenic Resources), and the New Jersey State Historic Preservation Plan, with which, the New Jersey *State Development and Redevelopment Plan* must be consistent.”

Explanation: One of the competitive criteria used by the Garden State Preservation Trust to rank qualified projects for historic site management grants is the relationship of the project to the policies in the State Plan and the NJ Historic Preservation Plan, with which the rules require the State Plan to be consistent.

3.6. Freshwater Wetlands Protection Act

3.6.1. Statute

Citation: N.J.S.A. 13:9B-1 et seq. at
Title 13. Conservation and Development
Chapter 9B. Freshwater Wetlands
L. 1987, c. 156, s. 1

“The Legislature finds and declares that freshwater wetlands protect and preserve drinking water supplies...provide a natural means of flood and storm damage protection, and thereby prevent the loss of life and property...Where pressures for commercial and residential development define the pace and pattern of land use, it is in the public interest to establish a program for the systematic review of activities in and around freshwater wetland areas designed to provide predictability in the protection of freshwater wetlands; that it shall be the policy of the State to preserve the purity and integrity of freshwater wetlands from random, unnecessary or undesirable alteration or disturbance; and that to achieve these goals it is important that the State expeditiously assume the freshwater wetlands permit jurisdiction currently exercised by the United States Army Corps of Engineers pursuant to the Federal Act and implementing regulations...”

Explanation: This Act establishes a State program to protect freshwater wetlands from unnecessary damage and serves to transfer jurisdiction over this function from the Federal government to the State.

3.6.2. Freshwater Wetlands Protection Act Rules

Citation: N.J.A.C. 7:7A-7.2
Title 7. Environmental Protection
Chapter 7a. Freshwater Wetlands Protection Act Rules
Subchapter 7. Individual Freshwater Wetlands and Open Water Fill Permits
Section 2. Standard requirements for all individual permits
R. 2008 D. 291, Eff. September 4, 2008
39 N.J.R. 3587(a), 40 N.J.R. 5581(a)

“This section sets forth requirements that apply to all activities to be covered by an individual permit...the Department shall issue an individual freshwater wetlands or open water fill permit only if the regulated activity...Is in the public interest, as determined by the

Department in consideration of the following... In determining whether a proposed activity is in the public interest, the Department shall consider, as one source of guidance, the goals, strategies, policy objectives and policies of the New Jersey *State Development and Redevelopment Plan*...”

Explanation: DEP will only issue an individual freshwater wetlands or open water fill permit if the regulated activity has no practicable alternative and is in the public interest. One criterion in evaluating the public interest test is whether the interests of the State Plan are met.

3.7. Coastal Area Facility Review Act

3.7.1. Statute

Citation: N.J.S.A. 13:19-1 et seq. at 17
Title 13. Conservation and Development - Parks and Reservations
Chapter 19. Coastal Protection. Coastal Area Facilities Review Act
Subchapter 17. Rules, regulations
L. 1973, c. 185, s. 17

“Within one year of enactment, DEP, in consultation with the *State Planning Commission* and county and municipal governments located in the coastal area, shall adopt new rules and regulations... shall be closely coordinated with the provisions of the *State Development and Redevelopment Plan*...”

Explanation: This Act was established to comply with Federal requirements regarding coastal area protection (Coastal Zone Management Act of 1972). Section 17 deals with adopting rules and regulations to implement the Act and requires the DEP to develop the rules in close coordination with the provisions of the State Plan to encourage resource protection regulations to be implemented consistent with the State Plan.

Note: In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J. Super. 293. Department of Environmental Protection (DEP) did not invalidate Coastal Zone Management (CZM) rules by giving regulatory effect to SDRP by presuming that boundaries established by the State Planning Commission would function as boundaries pursuant to Coastal Area Facility Review Act (CAFRA), and then by using those boundaries to establish impervious cover limits in CZM rules.

3.7.2. Coastal Zone Management Rules

Citation:

N.J.A.C. 7:7E-5B.3
Title 7. Environmental Protection
Chapter 7E. Coastal Zone Management
Subchapter 5B. Impervious Cover Limits and Vegetative Cover Percentages in the CAFRA Area
Section 3. Boundaries for coastal planning areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Non-mainland coastal centers
R. 2003 D. 60, Eff. January 7, 2003
34 N.J.R. 74(a); 35 N.J.R. 632(a)

“The boundaries of the Planning Areas, the community development boundaries of centers, and the boundaries of cores and nodes formally approved by the *State Planning Commission* as of August 1, 1999 are incorporated by reference into this subchapter.

These boundaries are the boundaries of the Coastal Planning Areas, CAFRA centers, CAFRA Cores and CAFRA nodes and shall be operative for the purposes of applying the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7E-5 and this subchapter, unless the Department, in *State Planning Commission* accordance with (b) and (c) below, accepts a formally approved new or changed boundary, or unless the Department, in accordance with (b) and (e) below, rejects a *State Planning Commission* formally approved new or changed boundary and subsequently promulgates a revised boundary.

(b) Whenever the *State Planning Commission* formally approves (see (h) below) any new or changed Planning Area boundary, any new or changed community development boundary, or any new or changed core or node boundary, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and this chapter. The Department shall not reject or reject and revise a boundary unless it finds that accepting the *State Planning Commission* approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be clearly inconsistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., or this chapter. For those new or changed community development boundaries or new or changed core or node boundaries which are located within the Pinelands National Reserve, the Department shall also, in consultation with the New Jersey Pinelands Commission, determine whether the boundaries are consistent with the intent, policies and objectives of the National

Parks and Recreation Act of 1978, P.L. 95-625, section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). Within 90 calendar days after the date on which the ***State Planning Commission*** formally approves such boundary, the Department shall publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the boundary for the purposes of N.J.A.C. 7:7E-5 and this subchapter.

(c) If the Department determines under (b) above to accept the ***State Planning Commission*** formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the accepted new or changed boundary is incorporated by reference as the boundary of the Coastal Planning Area, CAFRA center, CAFRA core and CAFRA node, and shall be operative 30 calendar days after the date of publication of the New Jersey Register notice under (b) above. A CAFRA center boundary shall supersede the boundary for a corresponding coastal center, if any, in Appendix 2 or Appendix 3, as applicable. CAFRA centers are listed for informational purposes in Appendix 5 of this chapter. As part of the New Jersey Register notice published under (b) above, the Department shall incorporate into Appendix 5 by administrative change the name of each CAFRA center for which the Department has accepted the boundary. However, in order to determine the location of a site with reference to the accepted boundaries of a CAFRA center, CAFRA core, or CAFRA node for purposes of determining the applicable impervious cover limit, an applicant shall refer to the CAFRA Planning Map in accordance with N.J.A.C. 7:7E-5B.4(b).

(d) If the Department determines under (b) above to reject the ***State Planning Commission*** formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the boundary incorporated by reference under (a) above shall continue to be operative, except as provided under (e) below.

(e) The Department may determine under (b) above to reject the ***State Planning Commission*** formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary and to establish a revised Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary by promulgating an amendment to this chapter in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Until the Department promulgates such revised boundary, the Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary under (a) above shall continue to be operative...

(h) For purposes of this section, a *State Planning Commission* formally approved new or changed boundary is one that the *State Planning Commission* has amended in accordance with the New Jersey *State Planning Act*, N.J.S.A. 52:18A-196 et seq., and the State Planning rules, N.J.A.C. 17:32...

(j) Neither formal approval by the *State Planning Commission* of a new or changed boundary for a Planning Area, a new or changed community development boundary, or a new or changed core or node boundary, nor the incorporation by reference and acceptance or revision by the Department of such boundary as the Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary under this section shall exempt any development from this subchapter or from any of the requirements in this chapter..."

Explanation: The rules define the boundaries of centers entitled to enhanced impervious cover using those centers designated in the State Plan as of August 1, 1999 and describe a procedure followed by DEP when the SPC revises boundaries to centers, for example, as a result of an approved request for a map change or plan endorsement.

Note: In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293. Procedures of Department of Environmental Protection (DEP) for reviewing and incorporating new or changed boundaries established by State Planning Commission did not amount to rule-making and were not subject to notice and comment requirements of Administrative Procedures Act (APA).

Citation: N.J.A.C. 7:7E-5B.6
Title 7. Environmental Protection
Chapter 7E. Coastal Zone Management
Subchapter 5B. Impervious Cover Limits and Vegetative Cover Percentages in the CAFRA Area
Section 6. Mainland coastal centers
R. 2003 D.60, Eff. January 7, 2003
34 N.J.R. 74(a), 35 N.J.R. 632(a)

(a) On February 7, 2005, the boundaries delineated by the Department for coastal centers not located on barrier islands, oceanfront spits, or peninsulas in the CAFRA area expired. The expired boundaries for such coastal centers are re-established as the boundaries for mainland coastal centers once all conditions set forth at (b)1 or (b)2 below are met. The boundaries of mainland coastal centers are described in Appendix 2 of this chapter. The boundaries

for coastal centers that expired on February 7, 2005 that do not meet the conditions set forth at (b) below are described in Appendix 4 of this chapter.

(b) A mainland coastal center is established under this section if, as explained at (a) above, the boundaries of the coastal center expired on February 7, 2005 and the coastal center is:

1. Located in a municipality that, prior to July 5, 2006 held a pre-petition meeting with the *Office of Smart Growth* in accordance with N.J.A.C. 5:85-7.3; or 2. Located in a municipality that:

i. By August 4, 2005, submits to the *Office of Smart Growth* a resolution of the municipal governing body requesting a pre-petition meeting in accordance with N.J.A.C. 5:85-7.3. The resolution shall identify the expired coastal centers described in Appendix 4 that the municipality seeks to re-establish. Only the expired coastal centers identified in the resolution shall be re-established;

ii. Prior to October 15, 2005, holds a pre-petition meeting with the *Office of Smart Growth* in accordance with N.J.A.C. 5:85-7.3; and

iii. Prior to March 15, 2006 obtains a determination from the Executive Director of the *Office of Smart Growth*, in accordance with N.J.A.C. 5:85-7.5, that its initial petition for *plan endorsement* is complete.

(c) The boundaries of the mainland coastal centers established in accordance with (b) above and described in Appendix 2 shall expire in accordance with (c)1 or 2 below, as applicable. On and after the expiration of the mainland coastal centers, the impervious cover limits and vegetative cover percentages for all sites in the CAFRA area, except for sites in the non-mainland coastal centers in Appendix 3 of this chapter, shall be determined in accordance with N.J.A.C. 7:7E-5B.4(c), (e) or (f). 1. On March 15, 2006, if the municipality in which the mainland coastal center is located has not obtained a determination from the Executive Director of the *Office of Smart Growth*, in accordance with N.J.A.C. 5:85-7.5, that its initial petition for *plan endorsement* is complete; or 2. On March 15, 2007.

(d) To reflect changes in mainland coastal centers occurring after February 6, 2006, the Department shall publish in the New Jersey Register a notice of administrative change when the boundaries of a mainland coastal center are established under (a) and (b) above or expire under (c) above.

(e) The areas identified at (e)1 through 6 below shall not be considered part of a mainland coastal center, except for purposes of (f) below: 1. Areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for

Endangered, Threatened or Other Priority Species. The data are available as a download at the CAFRA Planning Map layers webpage: www.nj.gov/dep/gis/CAFRAlayers.htm;

2. Areas mapped as Natural Heritage Program priority sites, excluding those lands within the boundaries of these sites mapped in the URBAN lands layer extracted from the most recent NJDEP Land Use/Land Cover GIS data set. Both the Natural Heritage Program priority site data and the URBAN lands data are available as a download at the CAFRA Planning Map layers webpage: www.nj.gov/dep/gis/CAFRAlayers.htm;
3. Land that is owned by Federal, State, county or municipal agencies or conservation organizations and dedicated to recreation, conservation of natural resources, wildlife protection, or wildlife management;
4. Special water resource protection areas along a Category One water established under the Stormwater Management rules, N.J.A.C. 7:8. Surface waters that are designated Category One are listed in the Surface Water Quality Standards at N.J.A.C. 7:9B;
5. Wetlands as defined at N.J.A.C. 7:7E-3.27; and 6. Areas identified as Coastal Critical Environmental Sites... The data are available as a download at the CAFRA Planning Map layers webpage: www.nj.gov/dep/gis/CAFRAlayers.htm.

after February 6, 2005 and proposes a development in a mainland coastal center established in accordance with (b) that has not expired pursuant to (c) above:

1. The impervious cover limits and vegetative cover percentages for those portions of the site located within the mainland coastal center shall be determined in accordance with N.J.A.C. 7:7E-5B.4(d) and N.J.A.C. 7:7E-5B.5, respectively, provided no portion of the proposed development, as defined at N.J.A.C. 7:7E-1.8, is located outside the boundaries of the mainland coastal center, or in one of the areas identified at (e)1 through 6 above.
2. If any portion of the proposed development, as defined at N.J.A.C. 7:7E-1.8, is located outside of the mainland coastal center boundaries, or in one of the areas identified at (e)1 through 6 above, then the impervious cover limits and vegetative cover percentages for the entire development shall be determined in accordance with N.J.A.C. 7:7E-5B.4(e) and 7:7E-5B.5, respectively, for the appropriate Coastal Planning Area.

(h) For purposes of any CAFRA permit application that proposes a 100 percent affordable housing development in a mainland coastal center established in accordance with (b)1 above or an expired coastal center located in a municipality that, prior to October 15, 2005 held a pre-petition meeting with the *Office of Smart Growth* in accordance with N.J.A.C. 5:85-7.3, the impervious cover limits and vegetative cover requirements shall be determined in accordance with N.J.A.C. 7:7-5B.4(d) and 5B.5, respectively, provided the CARA permit application is complete for final review pursuant to N.J.A.C.

7:L7-4.6 prior to March 15, 2007. Such applications shall no longer be applicable to developments proposed within a mainland coastal center or an expired coastal center if the Department establishes a corresponding CAFRA center pursuant to N.J.A.C. 7:7E-5B.2(c) or (e).

(i) For the purposes of (e)5 above, the boundaries of the Critical Environmental Sites on the State Plan Policy Map adopted by the *State Planning Commission* on March 1, 2001 are incorporated by reference into this subchapter. These boundaries are the boundaries of the Coastal Critical Environmental Sites. Whenever the *State Planning Commission* formally approves any new or changed Critical Environmental Site boundary within a mainland coastal center, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and this chapter. The Department shall not reject, or reject and revise, a boundary unless it finds that accepting the *State Planning Commission* approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be inconsistent with the chapter...”

Explanation:

These Coastal Zone Management rules describe a process for DEP to delineate mainland coastal centers to implement CAFRA, whereby the DEP will recognize State Plan designated centers, including those delineated in a plan endorsement process, as the basis for defining centers for the purposes of implementing CAFRA. This recognition is conditioned on a requirement that a series of environmental resources be omitted from the center(s). The centers so delineated were set to expire unless certain conditions are met with respect to land use planning and adoption of ordinances. The same review process of SPC designated centers in section 5B.3 is used to evaluate whether the new boundaries would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be inconsistent with the chapter. In that case, DEP would override the SPC center boundaries.

Citation:

N.J.A.C. 7:7E-6.3
Title 7. Environmental Protection
Chapter 7E. Coastal Zone Management
Subchapter 6. General Location Rules
Section 3. Secondary impacts
R. 2003 D. 60, Eff. January 7, 2003
34 N.J.R. 74(a), 35 N.J.R. 632(a)

“Secondary impacts are the effects of additional development likely

to be constructed as a result of the approval of a particular proposal. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which affect the site and surrounding region... Secondary impact analysis must include an analysis of the likely geographic extent of induced development, its relationship to the *State Development and Redevelopment Plan*, an assessment of likely induced point and non-point air and water quality impacts, and evaluation of the induced development in terms of all applicable Coastal Zone Management rules.”

Explanation: This part of the rule requires a secondary impact analysis where projects that are perceived as inducing development will be evaluated to determine if the added development will be detrimental. The analysis includes the relationship of the induced development to the State Plan and an assessment of air and water quality impacts.

Note: Matter of Cape May County Mun. Utilities Authority, 242 N.J.Super. 509, 577 A.2d 840 (A.D.1990). Permit condition requiring Department of Environmental Protection determination did not conflict with state and federal plans and was not beyond the department's authority.

3.8. Highlands Water Protection and Planning Act

3.8.1. Statute

Citation: N.J.S.A. 13:20-1 et seq. at 2
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Section 2. Findings, declarations relative to the "Highlands Water Protection and Planning Act"
L. 2004, c. 120, s. 2; Eff. August 10, 2004

“The Legislature finds and declares that the national Highlands Region is an area that extends from northwestern Connecticut across the lower Hudson River Valley and northern New Jersey into east central Pennsylvania; that the national Highlands Region has been recognized as a landscape of special significance by the United States Forest Service; that the New Jersey portion of the national Highlands Region is nearly 800,000 acres, or about 1,250 miles, covering portions of 88 municipalities in seven counties; and that the New Jersey Highlands Region is designated as a Special Resource Area in the *State Development and Redevelopment Plan*.”

Explanation: The Act establishes the Highlands Council, defines the Highlands Region (which is recognized in the State Plan as a special resource area), and authorizes the Council to prepare a Highlands Regional Master Plan to protect the natural resources (particularly drinking water sources) and to accommodate appropriate growth.

Citation: N.J.S.A. 13:20-3
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Section 3. Definitions relative to the "Highlands Water Protection and Planning Act"
L. 2004, c. 120, s. 2; Eff. August 10, 2004.

"State Development and Redevelopment Plan" means the *State Development and Redevelopment Plan ...*”

Explanation: Definitions in the Act include one for the State Plan.

Citation: N.J.S.A. 13:20-6
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Section 6. Powers, duties, responsibilities of council
L. 2004, c. 120, s. 2; Eff. August 10, 2004

”To work with interested municipalities to enter into agreements to establish, where appropriate, capacity-based development densities, including, but not limited to, appropriate higher densities to support transit villages or in centers designated by the *State Development and Redevelopment Plan* and endorsed by the *State Planning Commission*;

Explanation: The Highlands Council has the power and duty to work with municipalities to establish higher development densities to support centers designated in the State Plan.

Citation: N.J.S.A. 13:20-7
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Section 7. Highlands Region, preservation area; delineated
L. 2004, c. 120, s. 2; Eff. August 10, 2004

“The preservation area shall not include any land located within the boundaries of any regional center or town center designated by the *State Planning Commission* pursuant to the "*State Planning Act*," ... except to the extent necessary as set forth in the boundary description

of the preservation area in subsection b. of this section to reflect appropriate and nearest practicable, on-the-ground, and easily identified reference points...

Explanation: The Act excludes land designated as centers by the SPC from the preservation area to the greatest extent practicable. These centers are located in the planning area portion of the Highlands Region where conformance with the Highlands Master Plan is not mandatory.

Citation: N.J.S.A. 13:20-8
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Section 8. Preparation, adoption of master plan for the Highlands Region. Subsection B.
L. 2004, c. 120, s. 2; Eff. August 10, 2004

“...Within 60 days after adopting the regional master plan, the council shall submit the plan to the **State Planning Commission** for endorsement pursuant to the rules and regulations adopted by the **State Planning Commission**. The **State Planning Commission** review shall be limited to the planning area only.”

Explanation: Part of the process in adopting the Highlands Master Plan is for the Council to hold public hearings. The Council shall not adopt the plan unless it recommends receiving zones in the planning area and capacity thereof for each receiving zone. It is to submit its Regional Master Plan to the SPC for endorsement (with respect to the planning area) within 60 days after adoption.

Citation: N.J.S.A. 13:20-9
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Section 9. Consultations, etc. relative to preparation, revisions of regional master plan
L. 2004, c. 120, s. 2; Eff. August 10, 2004

“During the preparation of the regional master plan or any revision thereof, the council shall consult with the Department of Environmental Protection, the Department of Community Affairs, the **State Planning Commission**...The council shall review all relevant federal, State, and private studies of the Highlands Region, the **State Development and Redevelopment Plan**, municipal, county, and regional plans, applicable federal and State laws and rules and regulations, and other pertinent information on the Highlands Region.”

Explanation: As part of preparing the Highlands Regional Master Plan, the Highlands Council is to consult with the SPC, among other entities. It is also to review relevant studies of the Highlands Region, including the State Plan findings.

Citation: N.J.S.A. 13:20-10
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Section 10. Goals of regional master plan
L. 2004, c. 120, s. 2; Eff. August 10, 2004

“...encourage, consistent with the *State Development and Redevelopment Plan* and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes, and discourage piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from the individual and cumulative adverse impacts thereof...”

Explanation: The goals of the regional master plan, with respect to the preservation area, are to be consistent with the State Plan smart growth strategies and principles. In particular, to discourage piecemeal, scattered and inappropriate development and to accommodate local and regional economic development. A goal is to focus development in or adjacent to areas already developed and identify opportunities for economic development in these areas.

Citation: N.J.S.A. 13:20-13
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Section 13. Use of regional master plan elements for TDR program
L. 2004, c. 120, s. 2; Eff. August 10, 2004

“The council shall work with municipalities and the *State Planning Commission* to identify centers, designated by the *State Planning Commission*, as voluntary receiving zones for the transfer of development rights program...The *Office of Smart Growth* shall review and coordinate State infrastructure capital investment, community development and financial assistance in the planning area in furtherance of the regional master plan. Prior to the council establishing its transfer of development rights program, the *Office of Smart Growth* shall establish a transfer of development rights pilot program that includes Highlands Region municipalities... Any municipality located outside of the Highlands Region that (1) has

received *plan endorsement* by the *State Planning Commission* pursuant to the "*State Planning Act*," ...or the *State Planning Commission*, in coordination with the Highlands Water Protection and Planning Council, determines has designated an appropriate project area as a receiving zone, (2) establishes a receiving zone which provides for a minimum residential density of five dwelling units per acre for the transfer of development rights from a sending zone in the Highlands Region, and (3) accepts that transfer of development rights, shall, for those receiving zones, be eligible for the same grants, authority, and other assistance, incentives, and benefits as provided to municipalities in the planning area pursuant to subsection k. of this section except for legal representation as provided pursuant to section 22 of this act and priority status in the Highlands Region for any State capital or infrastructure programs.”

Explanation: The Highlands Council and SPC are to work together with municipalities to identify SPC designated centers as voluntary receiving zones in the Highlands TDR Program. OSG is to perform a review of, and coordinate State infrastructure development and financial assistance in the planning area. OSG is also to perform a TDR pilot program for municipalities within the Highlands Region. This section also discusses providing incentives to municipalities outside the Highlands Region that have received plan endorsement and agreed to function as receiving zones for the Highlands TDR program.

Citation: N.J.S.A. 13:20-15
Title 13. Conservation And Development – Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Subchapter 15. Municipalities, counties in planning area may petition council relative to revision
L. 2004, c. 120, s. 2; Eff. August 10, 2004

“For any municipality located wholly in the planning area or for any portion of a municipality lying within the planning area, the municipality may, by ordinance, petition the council of its intention to revise its master plan and development regulations, as applicable to the development and use of land in the planning area, to conform with the goals, requirements, and provisions of the regional master plan.

The municipality shall proceed in revising its master plan and development regulations in accordance with the framework adopted by the council pursuant to subsection a. of section 14 of this act.

After receiving and reviewing those revisions, and after consulting

with the *State Planning Commission*, the council shall approve, reject, or approve with conditions the revised plan and development regulations, as it deems appropriate, after public hearing, within 60 days after the date of submission thereof...Each county with lands in the planning area may...conform with the goals, requirements, and provisions of the regional master plan...After receiving and reviewing those revisions, and after consulting with the *State Planning Commission*, the council shall approve, reject, or approve with conditions the revised plan and associated regulations, as it deems appropriate, after public hearing, within 60 days after the date of submission thereof..."

Explanation: A municipality or county that is in the planning area (in whole or part) may petition the Highlands Council in regard to its intention to conform to the Highlands Master Plan. Part of the review process is for the Council to consult with the SPC on proposed master plan and local land use ordinance revisions before approval, approval with conditions or rejection of the petition.

Citation: N.J.S.A. 13:20-18
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Subchapter 18. Qualification for State aid, grants
L. 2004, c. 120, s. 2; Eff. August 10, 2004

"Any municipality in the Highlands Region whose municipal master plan and development regulations, and any county in the Highlands Region whose county master plan and associated regulations, have been approved by the council to be in conformance with the regional master plan...shall qualify for State aid, planning assistance, technical assistance, and other benefits and incentives that may be awarded or provided by the State to municipalities and counties which have received *plan endorsement* by the *State Planning Commission* pursuant to the "*State Planning Act*," ...or which otherwise practice or implement smart growth strategies and principles..."

Explanation: The Act provides that municipalities and counties that conform to the regional master plan shall be entitled to any State aid or benefits that are available to municipalities or counties that have received plan endorsement from the SPC.

Citation: N.J.S.A. 13:20-28
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Subchapter 28. Exemptions

L. 2004, c. 120, s. 2; Eff. August 10, 2004

“The following are exempt from the provisions of this act, the regional master plan, any rules or regulations adopted by the Department of Environmental Protection pursuant to this act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan...a major Highlands development located within an area designated as **Planning Area 1** (Metropolitan), or **Planning Area 2** (Suburban), as designated...as of March 29, 2004, that on or before March 29, 2004 has been the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair share obligation of the municipality in which the development is located. The exemption provided pursuant to this paragraph shall expire if construction beyond site preparation does not commence within three years after receiving all final approvals required pursuant to the "MLUL..."”

Explanation: The Act provides for an exemption from being covered by the Regional Master Plan in the event an application has been approved in Planning Areas 1 or 2 for a development that provides affordable housing pursuant to a settlement or builders remedy lawsuit prior to the date of adoption of the Act, provided construction begins within three years of final approvals.

Citation: N.J.S.A. 13:20-31
Title 13. Conservation And Development - Parks And Reservations
Chapter 20. Highlands Water Protection and Planning
Subchapter 31. Adoption of rules, regulations; procedure
L. 2004, c. 120, s. 2; Eff. August 10, 2004

“...the Commissioner of Environmental Protection, after consultation with the Department of Agriculture, the Department of Community Affairs, the **State Planning Commission**, and the Department of Transportation, shall...adopt the rules and regulations...necessary to establish the Highlands permitting review program... These rules and regulations shall thereafter be adopted, amended, or readopted by the commissioner in accordance with the requirements of the "Administrative Procedure Act," after consultation with the council, the Department of Agriculture, the Department of Community Affairs, the **State Planning Commission**, and the Department of Transportation.”

Explanation: This section of the Act authorizes the DEP to develop a Highlands

permitting review program. The SPC, among others, are to be consulted as part of the rulemaking process. The rules shall not apply in the planning area of the Highlands Region.

3.8.2. Highlands Water Protection and Planning Act Rules

Citation: N.J.A.C. 7:38-2.1
Title 7. Environmental Protection
Chapter 38. Highlands Water Protection and Planning Act rules
Subchapter 2. Jurisdiction, Applicability and Exemptions
R. 2006 D. 420, Eff. November 2, 2006
37 N.J.R. 4767(a), 38 N.J.R. 5011(a)

“Jurisdiction...The preservation area shall not include any land located within the boundaries of any regional center or town center designated by the *State Planning Commission* pursuant to the *State Planning Act*, N.J.S.A. 52:18A-196 et seq., as of August 10, 2004, except to the extent necessary as set forth in the boundary description of the preservation area in N.J.S.A. 13:20-7b(1) to reflect appropriate and nearest practicable, on-the-ground, and easily identified reference points...”

Explanation: This part of the Act describes the jurisdiction of the Highlands Council in the Highlands Region and indicates the preservation area in the region is to be outside of any centers designated by the State Planning Commission.

Citation: N.J.A.C. 7:38-2.3
Title 7. Environmental Protection
Chapter 38. Highlands Water Protection and Planning Act Rules
Subchapter 2. Jurisdiction, Applicability and Exemptions
Section 3. Exemptions
R. 2006 D. 420, Eff. November 2, 2006
37 N.J.R. 4767(a), 38 N.J.R. 5011(a)

“The following projects or activities are exempt from the requirements of this chapter, but are required to comply with all other Federal, state and local requirements that may apply to the proposed project...major Highlands development located within an area designated as *Planning Area 1* (Metropolitan), or Planning Area 2 (Suburban) as designated pursuant to the *State Planning Act*, N.J.S.A. 52:18A-196 et seq., as of March 29, 2004, that on or before March 29, 2004 has been the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of

the fair share obligation of the municipality in which the development is located...”

Explanation: “The Highlands rules regarding obtaining development permits provide an exemption if development is in Planning Area 1 or 2 and will provide affordable housing as a result of a stipulated settlement agreement or a builders’ remedy law suit for fulfilling a municipality’s fair share obligation.

Citation: N.J.A.C. 7:38-9.2
Title 7. Environmental Protection
Chapter 38. Highlands Water Protection and Planning Act Rules
Subchapter 9. Application Contents
Section 2. Application requirements for a Highlands Applicability Determination
R. 2006 D. 420, Eff. November 2, 2006
37 N.J.R. 4767(a), 38 N.J.R. 5011(a)

“All applicants seeking a Highlands Applicability Determination shall provide the information listed at (b) and (c) below on a Highlands Applicability Determination form. In addition, if an applicant is claiming an exemption from the Highlands Act in accordance with N.J.A.C. 7:38-2.3, the applicant shall submit the information required at (d) below...For a major Highlands development, located within an area designated as of March 29, 2004 as **Planning Area 1** (Metropolitan), or Planning Area 2 (Suburban) pursuant to the **State Planning Act**, N.J.S.A. 52:18A-196 et seq., that on or before March 29, 2004 was the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair share obligation of the municipality in which the development is located pursuant to N.J.A.C. 7:38-2.3(a)17...”

Explanation: The rules providing for an exemption from obtaining a permit for a major Highlands development apply to projects in Planning Area 1 or 2 that will provide affordable housing as a result of a stipulated settlement agreement or a builders’ remedy law suit for fulfilling a municipality’s fair share obligation. In order to qualify, the project must comply with all Federal, and local statutes, regulations, development regulations or ordinances that may apply to the proposed activity and construction beyond site preparation must commence within three years after receiving all final approvals required pursuant to the MLUL.

4. INSURANCE

4.1. An Act Concerning Access to Automobile Insurance in Urban Areas

4.1.1. Statute

Citation: N.J.S.A. 17:33C-1 et seq. at 2
Title 17. Corporations and Institutions for Finance and Insurance
Chapter 33C. Automobile Insurance Urban Enterprise Zone Program
Subchapter 2. Automobile insurance urban enterprise zone program
L. 1997, c. 151, s. 20

“The commissioner shall establish in a fair and equitable manner an automobile insurance urban enterprise zone program designed to encourage greater availability of automobile insurance in certain urban areas of this State ...”

Explanation: This Act is enabling legislation authorizing the Commissioner of the Department of Banking and Insurance to develop a program that will improve access to automobile insurance in urban areas.

4.1.2. UEZ Share Rules

Citation: N.J.A.C. 11:3-46.3
Title 11. Insurance
Chapter 3. Automobile Insurance
Subchapter 46. Automobile Insurance Urban Enterprise Zone Program
Section 3. Designation of UEZ and UEZ share
R. 2006 D. 243, Eff. June 7, 2006
37 N.J.R. 4162(a), 38 N.J.R. 2828(c)

“...Pursuant to N.J.S.A. 17:33C-2, the Commissioner has identified and designated as UEZs certain urban-based geographic areas where the Commissioner has found that automobile insurance consumers would benefit from increased access...In determining UEZ areas, the Commissioner first determined those areas of the State that are urban, as follows: The eight Urban Centers designated by the *State Planning Commission*, Appendix C in the most recent edition of the State Plan...”

Explanation: The Commissioner established a criterion for evaluating where increased access to automobile insurance should be focused which

used the urban centers designations in the State Plan. The auto UEZs were created to address the problem of limited availability of auto insurance in the urban areas in the State in the 1990's. After 2003 reforms in the auto insurance market, more companies began writing and investing here, increasing competition in all areas of the State and reducing the need for the program.

Note:

The UEZ program is inactive. The UEZ assignment program, which granted the department the ability to direct insurer participation in the program, expired on April 1 2009. See N.J.S.A. 17:29D-1(6). This was part of an effort to reduce regulatory burdens and encourage new insurers to enter the State and existing insurers to increase their capital investment here.

5. EDUCATION

5.1. Educational Facilities Construction and Financing Act

5.1.1. Statute

Citation: N.J.S.A. 18A:7G-1 at 13
Title 18A. Education
Chapter 7G. Educational Facilities Construction and Financing Act
Subchapter 13. Responsibilities of financing authority, development authority
L. 2000, c. 72, s. 1, Eff. July 18, 2000

“In order to ensure that the Legislature's constitutional responsibility for adequate educational facilities is met, there is a need to establish an efficiency standard for educational facilities at the elementary, middle, and secondary school levels which will assure that the core curriculum content standards are taught to all of the children of the State in a setting which facilitates and promotes that learning...Educational infrastructure inadequacies are greatest in the SDA districts where maintenance has been deferred and new construction has not been initiated due to concerns about cost...the State must promptly engage in a facilities needs assessment and fund the entire cost of repairing, renovating, and constructing the new school facilities determined by the Commissioner of Education to be required to meet the school facilities efficiency standards in the SDA districts.”

Explanation: The Legislature found that school facilities are inadequate. This enabling legislation authorizes evaluation and funding of projects based on submissions from school districts of long range facilities plans that have been vetted at local municipal planning boards.

5.1.2. Educational Facilities Construction and Financing Rules

Citation: N.J.A.C. 6A:26-7.1
Title 6A. Education
Chapter 26. Educational Facilities
Subchapter 7. Land Acquisition, School Closing, and Land Disposal
R. 2007 D. 81, Eff. February 9, 2007
38 N.J.R. 4533(a), 39 N.J.R. 899(a)

“A school district may obtain voter approval...for funding the acquisition of land prior to Division approval of the acquisition of land, but shall not take any action to acquire the land prior to obtaining Division approval...The following information shall be provided, generally by the school district:...statement from the New Jersey licensed architect, professional engineer or professional planner indicating whether the proposed use of the land to be acquired is consistent with the goals and strategies of the New Jersey ***State Development and Redevelopment Plan*** (State Plan). If inconsistent with such goals and strategies, the statement shall include adequate documentation to demonstrate to the Division that there are no alternative suitable sites available in the school district that are consistent with the goals and strategies of the State Plan...”

Explanation: Rules regarding acquisition of land for school facilities projects include submissions to the DOE of documentation that either the project is consistent with the State Plan or that there is no alternative suitable site available in the district.

6. HEALTH

6.1. Air Pollution Control Act of 1954

Citation: N.J.S.A. 26:2C-1
Title 26. Health and Vital Statistics
Chapter 2C. Air Pollution Control
Subchapter 17. Diesel Retrofit Program
L. 1954, c. 212, s. 1

“Department review of fleet plans and notice of intent to comply...The Department will use its best efforts to give the highest priority to the review of fleet retrofit plans for fleets that service or have a base of operation within two miles of an urban center or urban complex, as designated by the *State Planning Commission*...”

Explanation: The DEP administers a program to review fleet plans in order to reduce air pollution. In prioritizing its program it uses best efforts to give highest priority to review of plans near urban centers as designated in the State Plan.

6.2. Global Warming Solutions Fund Act

6.2.1. Statute

Citation: N.J.S.A. 26:2C-51
Title 26. Health and Vital Statistics
Chapter 2C. Air Pollution Control
Subchapter 51. Coordination in administration of programs; use of moneys
L. 2007, c. 340, s. 6, Eff. Jan. 13, 2008

“...Moneys in the fund...shall be annually appropriated and used for the following purposes... Ten percent shall be allocated to the department to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions, including but not limited to technical assistance to local governments, and the awarding of grants and other forms of assistance to local governments to conduct and implement energy efficiency, renewable energy, and distributed energy programs and land use planning where the grant or assistance results in a measurable reduction of the emission of greenhouse gases or a measurable reduction in

energy demand.”

Explanation: This Act creates a fund to establish a framework for funding projects to reduce Green House Gas emissions trading from money raised by auction of allowances. It establishes a special, non-lapsing fund known as the "Global Warming Solutions Fund." This is to implement the Global Warming Response Act, in which the Legislature found it is in the public interest to establish a greenhouse gas emissions reduction program to limit the level of Statewide greenhouse gas emissions, and greenhouse gas emissions from electricity generated outside the State but consumed in the State. It called for the State to the 1990 level or below, of those emissions by the year 2020, and to reduce those emissions to 80% below the 2006 level by the year 2050. Grants are to be awarded, in part, to local governments to conduct land use planning.

6.2.2. Global Warming Solutions Fund Rules

Citation: N.J.A.C. 7:27D-2.2
Title 7. Environmental Protection
Chapter 27D. Global Warming Solutions Fund Rules
Subchapter 2. Program Area Determination, Priority Ranking, Award, and Reporting System
R. 2009 D. 373, Eff. December 21, 2009
41 N.J.R. 833(a), 41 N.J.R. 4776(a)

“Project award criteria...For each project within a program area that the EDA, BPU, or the Department has determined to be eligible for funding from that agency's percentage of the Global Warming Solutions Fund in accordance with N.J.A.C. 7:27D-2.1, the agency funding the project shall assign priority points based on the factors listed in (b) below. The assignment of priority points shall reflect the degree to which a proposed project furthers the goals of the New Jersey Energy Master Plan, the Global Warming Response Act, the Act and, as applicable, the policy objectives of the **State Development and Redevelopment Plan**. A program area that provides direct financial assistance to electricity customers in the low-income or moderate income residential sector, or that enhances the stewardship and restoration of the State's forests and tidal marshes, does not involve a project and is not subject to the requirements of this section....”

Explanation: This program, designed to prioritize projects that will receive funding from the Global Warming Solutions Fund is based, in part, on the degree to which the project furthers the policy objectives of the State Plan.

7. TRANSPORTATION

7.1. Transportation Act of 1966

7.1.1 Statute

Citation: N.J.S.A. 27:1A-1 et seq. at 5.10
Title 27. Highways
Subtitle 1A. Department of Transportation (DOT)
Chapter 1C. Transportation Act of 1966
Article 1. General Provisions
Subchapter 5.10. Consultation with other agencies
L. 1966, c. 301, s. 1

“The Department of Transportation shall consult with the Department of Labor, the *Office of State Planning*, the New Jersey Commission on Capital Budgeting and Planning and any other federal, State, regional or local agency having an interest in the preparation of the urban transportation supplement to the State Transportation Plan.”

Explanation: The Transportation Act is enabling legislation for the DOT. Section 5 authorizes the DOT to develop and maintain a comprehensive master plan for all modes of transportation development, with special emphasis on public transportation. The plan is to be revised and updated at least every five years. In addition, the DOT is to develop and promote programs to foster efficient and economical transportation services in the State and prepare plans for the preservation, improvement and expansion of the public transportation system, with special emphasis on the coordination of transit modes and the use of rail rights of way, highways and public streets for public transportation purposes. The Act was amended to establish a means for an integrated and balanced transportation system for the State and to coordinate transportation activities of State agencies having transportation responsibilities across the State. Section 5.10 deals with preparing an Urban Transportation Supplement to the State Transportation Plan to identify existing and projected needs with an emphasis on inner city residents commuting to work using public transportation. Consultation with the Office of State Planning, among others, is required in preparation of the plan.

Note: E.O. 45 (1990)

7.1.2. County Local Aid Rules

Citation: N.J.A.C. 16:20A-2.2
Title 16. Transportation
Chapter 20A. County Local Aid
Subchapter 2. County Aid
R. 2006 D. 395, Eff. October 19, 2006
38 N.J.R. 2389(a), 38 N.J.R. 4874(a)

“..The Annual Transportation Program shall contain a statement describing how the projects in the program are consistent with all applicable State and regional planning documents, including, but not limited to, the *State Development and Redevelopment Plan*, the State long-range transportation plan, the regional long-range transportation plan of the appropriate metropolitan planning organization, and the county master plan...”

Explanation: These rules establish procedures and criteria for awarding county local aid for proposed transportation projects. A screening committee reviews the applications for award of grants. One of the criteria in evaluating projects is consistency of the project with the State Plan.

7.1.3. Municipal Local Aid Rules

Citation: N.J.A.C. 16:20B-1.3
Title 16. Transportation
Chapter 20B. Municipal Local Aid
Subchapter 1. General Provisions
Section 3. Funding allocation and agreement procedure
R. 2006 D. 396, Eff. October 19, 2006
38 N.J.R. 2395(a), 38 N.J.R. 4877(a)

“...Procedures for municipal local aid formula allocations are as follows:... consistency with applicable planning documents (including, but not limited to, the *State Development and Redevelopment Plan*, the State long-range transportation plan, the long-range plan of the appropriate metropolitan planning organization, and the county and municipal master plans), and performance and timeliness in designing, awarding and constructing previous projects funded by municipal local aid...”

Explanation: These rules establish procedures and criteria for awarding local municipal aid for proposed transportation projects. A screening

committee reviews the applications for award of grants. One of the criteria in evaluating projects is consistency of the project with the State Plan.

7.2. New Jersey Transportation Development District Act of 1989

Citation: N.J.S.A. 27:1C-1 et seq. at 4
Title 27. Highways
Subtitle 1A. Department of Transportation
Chapter 1C. NJ Transportation Development District Act of 1989
Article 4. Designation, delineation of transportation development district
L. 1989, c. 100, s. 4

“...The governing body of any county may...apply to the commissioner for the designation and delineation of a transportation development district within the boundaries of the county....The application shall include...certification that there is in effect for the county a current county master plan adopted under R.S. 40:27-2 and that creation of the district would be in conformity both with the county master plan and with the *State Development and Redevelopment Plan* adopted under the "*State Planning Act*," ...”

Explanation: The Act recognizes rapid growth in regions, often along state highways and urban areas, creates “growth districts” and “growth corridors” across political boundaries. It creates a means to make special provisions for financing of needed transportation improvements and allows the various governmental entities to work together. Article 4 describes how a county may apply to the DOT for designation and delineation of transportation development district. The application must include evidence that the requested district would be in conformity with both the county master plan and the State Plan.

Citation: N.J.S.A. 27:1C-5
Title 27. Highways
Chapter 1C. NJ Transportation Development District Act of 1989
Article 5. Joint planning process
L. 1989, c. 100, s. 4

“The draft district transportation improvement plan shall be in accordance with the State transportation master plan adopted under section 5 of P.L.1966, c.301 (C.27:1A-5), the county master plan adopted under R.S. 40:27-2, and shall be in conformity with the *State Development and Redevelopment Plan* adopted under the "*State*

Planning Act, "...

Explanation: The Act recognizes rapid growth in regions, often along state highways and urban areas, creates “growth districts” and “growth corridors” across political boundaries. It creates a means to make special provisions for financing of needed transportation improvements and allows the various governmental entities to work together. Article 5 describes the application procedure to create a TDD including proposed boundaries, evidence of growth, description of need, certification that the master plan is up to date. In addition, the district would need to be in conformity with the county’s master plans and the State Plan. After designation of the district, the Act provides for a joint planning process resulting in creation of a draft district transportation improvement plan and a draft financial plan.

7.3. An Act Concerning Expedited Permits

Citation: N.J.S.A. 27:1E-1
Title 27. Highways
Subtitle 1. Department of Transportation
Chapter 21E. Charity Care Payments
Section 1. Definitions relative to smart growth in DOT and expedited permits
L. 2004, c. 89, s. 6, Eff. Date: July 9, 2004

"Smart growth area" means an area designated pursuant to P.L. 1985, c. 398 (C. 52:18A-196 et seq.) as ***Planning Area 1*** (Metropolitan), ***Planning Area 2*** (Suburban), a ***designated center***, or a designated growth center in an endorsed plan..."

Explanation: This Act is enabling legislation to: create an expedited permit review process in growth areas, create a Division of Smart Growth in a series of State agencies and establish the position and role of the Smart Growth Ombudsman. Section 1E relates to creation of the Division of Smart Growth within the DOT and defines smart growth areas to which the Act pertains, using State Plan designations.

Note: E.O. 45 (2005)

7.4. State Highway Access Management Act

7.4.1. Statute

Citation: N.J.S.A. 27:7-89 et seq. at 91
Title 27. Highways
Chapter 7. Acquisition, Construction And Maintenance By State
Subchapter 91. Access Code
L. 1989, c. 32, s. 3, Eff. Feb. 23, 1989

“The Commissioner of Transportation shall . . . adopt as a regulation . . . a State highway access management code (hereinafter, "access code") providing for the regulation of access to State highways . . . The access code shall establish a general classification system for the State highway system . . . based upon the following criteria: (1) the function that segments of State highway serve and are planned to serve within the State highway system and within the general system of streets and highways, (2) the environment within which highways are located, including but not limited to urban and rural environments, (3) the appropriate and desirable balance between facilitating safe and convenient movement of through traffic and providing direct access to abutting property, and (4) the desirable rate of speed and the degree to which through traffic should be protected from major variations in speed. Each State highway segment shall have its classification identified in the access code.”

Explanation: This Act directs the DOT to create a general classification system for the State’s highway. The DOT is directed to adopt the classification in the DOT’s access code in a rulemaking. The purpose of the code is to protect the functional integrity of the highway system and the public investment therein while avoiding undue burdens on property owners. The regulations consider State Plan growth areas in making highway access decisions.

7.4.2 Highway Access Management Code

Citation: N.J.A.C. 16:47-1.1
Title 16. Transportation
Chapter 47. State Highway Access Management Code
Subchapter 1. Definitions
R. 2007 D. 145, Eff. April 11, 2007.
39 N.J.R. 178(a); 39 N.J.R. 1802(a)

“**Designated center**” means a specific area where a compact form of

development (exists or is planned) with a core or node (focus of residential, commercial and service development) which is listed in Appendix C of the *State Development and Redevelopment Plan* adopted June 12, 1992 or superseding issue, or other *designated center* officially recognized by the *State Planning Commission*. Other *designated centers*, recognized after the June 12, 1992 adoption of the *State Development and Redevelopment Plan* or superseding issue are shown on the approved Resource, Planning and Management Maps of the State Plan and Redevelopment Plan available at the *Office of State Planning*.

“Rural area” means any area of the State which is not within *Planning Area 1*, Planning Area 2 or a designated Center whose boundaries are shown on the approved Resource Planning and Management Maps (note: now known as State Plan Policy Maps) of the *State Development and Redevelopment Plan* adopted by the *State Planning Commission* or rural areas within the Pinelands or within the Hackensack Meadowlands District as identified by the Access Code Appendix B.

"Urban area" means an area of the State which is included in *Planning Area 1*, Planning Area 2 or a *designated center* whose boundaries are shown on the approved Resource Planning and Management Maps of the *State Development and Redevelopment Plan* adopted by the *State Planning Commission* or an area within the Pinelands or within the Hackensack Meadowlands District identified as urban by the Access Code Appendix B.

Explanation: The access code implements the DOT statute concerning creating a system for highway access. In the definitions section, the term “designated center” refers to the State Plan and those centers identified in Appendix C, the term “urban area” refers to Planning Area 1 or 2 or a designated center as shown in maps in the State Plan and also growth areas in the Pinelands and Hackensack Meadowlands District and the term “rural area” refers to areas outside of the aforementioned growth areas.

Citation: N.J.A.C. 16:47-5.5
Title 16. Transportation
Chapter 47. Highway Access Management Code
Subchapter 5. Procedures for changes in classification
33 N.J.R. 2043(a), 34 N.J.R. 507(a)

“...A decision on the request for a change in classification shall be made by the Assistant Commissioner, Planning, Research and Local Government Services. In evaluating the application, the Assistant Commissioner shall consider the existing access classifications of

adjacent segments of the State highway system and the county and municipal road networks, conformity with municipal and county master plans and development ordinances and with the *State Development and Redevelopment Plan*, access classification criteria set forth in N.J.A.C. 16:47-2.1, and other appropriate factors.”

Explanation: Changes in highway access classification are permitted and among the considerations for deciding on a request for change is whether the existing access of adjacent segments of the highway system is consistent with local, regional master plans and the State Plan. The Assistant Commissioner, Planning, Research and Local Government Services advise the applicant in writing whether or not the classification change request has been accepted or rejected and provides the applicant with reasons for the decision.

Citation: N.J.A.C. 16:47-8.4
Title 16. Transportation
Chapter 47. State Highway Access Management Code
Subchapter 8. Access Code Revisions
Section 4. State Development and Redevelopment Plan
R. 2007 D. 145, Eff. April 11, 2007
39 N.J.R. 178(a); 39 N.J.R. 1802(a)

“The Commissioner shall modify the Access Code, as appropriate, to support an adopted *State Development and Redevelopment Plan*. The Commissioner shall review the Access Code whenever the Plan is updated and make appropriate modifications. The modifications shall be incorporated into the Access Code in the manner established for adoption of rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.”

Explanation: The rules require that the access code be revised whenever a new State Plan is adopted or amendments to the State Plan Policy Map are made, and to modify the code as needed, in order to support implementation of the State Plan.

8. ALCOHOLIC BEVERAGES

8.1. Alcoholic Beverages Control Act

Citation: N.J.S.A. 33:1-24.1 et seq. at 3
Title. 33. Intoxicating Liquors
Chapter 1. Alcohol Beverages Control Act
Subchapter 24.3. Acquisition, sale of inactive plenary retail
consumption licenses
L. 2007, c. 351, s. 3, Eff. April 1, 2008

“...a municipality in which is located an urban enterprise...or any supplement thereto, and a *Planning Area 1* (Metropolitan), as designated pursuant to the "*State Planning Act*",...may acquire any existing plenary retail consumption licenses within the municipality that are inactive and retain any such licenses in an inactive status for a period of up to five years.”

Explanation: The Act creates a mechanism to license activities on sale of alcoholic beverages. Section 24 deals with creating a means and issuing special licenses to serve alcoholic beverages for establishments in smart growth projects. In subsection a, municipalities in areas in Urban Enterprise Zones (UEZ) and Planning Area 1 can acquire inactive licenses and retain them for up to 5 years. In subsection b, the licenses so owned can be sold to an owner of a project in smart growth areas, which includes, among others, growth areas defined in the State Plan. See definition at N.J.S.A. 52:27D-10.2.

Note: The definition of smart growth area is that which is used in the legislation regarding expedited permits and the Smart Growth Ombudsman. See N.J.S.A. 13:1D-144.

9. ECONOMIC DEVELOPMENT

9.1. NJ Economic Development Authority Act

Citation: N.J.S.A. 34:1B-1 et seq. at 5
Title 34. Labor And Workers' Compensation
Chapter 1B. Business And Industry Promotion
Subchapter 5. Powers
L. 1974, c. 80, s. 5

“The authority shall have the following powers: ii. To finance or develop private or public parking facilities or structures, which may include the use of solar photovoltaic equipment, in municipalities qualified to receive State aid...and municipalities that contain areas designated...as **Planning Area 1** (Metropolitan), **Planning Area 2** (Suburban), or a town center, and to provide appropriate assistance, including but not limited to, extensions of credit, loans, and guarantees...The authority may serve as the issuing agent of bonds to finance the undertaking of a project for the purposes of this subsection.”

Explanation: This Act is enabling legislation for the Economic Development Authority. It defines the composition and duties of the EDA. Chapter 1B authorizes the EDA to finance parking facilities. Among the criteria for areas where the authority can finance such projects, are those in municipalities within State Plan growth areas.

9.2. Business Retention and Relocation Assistance Act

9.2.1 Statute

Citation: N.J.S.A. 34:1B-112 et seq. at 113
Title 34. Labor And Workers' Compensation
Chapter 1B. Business And Industry Promotion
Subchapter 113. Definitions relative to business retention and relocation assistance
L. 1996, c. 25, s. 2

“... "Designated urban center" means an urban center designated in the **State Development and Redevelopment Plan** adopted by the **State Planning Commission**...”

Explanation: This Act concerns business retention and relocation assistance grants (BRRAG) available through the EDA. This program establishes grants of Corporate Business Tax (CBT) and insurance premium tax credits to certain businesses to assist in relocation and retention. Section 113 deals with attracting manufacturing and research and development businesses to provide more full time jobs in New Jersey. It establishes minimum standards to participate. A bonus award for relocation of > 2,000 employees from outside a designated urban center to inside one (but not from an Urban Enterprise Zone (UEZ) established pursuant to the UEZ Act. N.J.S.A. 52:27H-60 et seq.). In this case, one criteria used for qualifying applicants for assistance is related to bringing jobs to urban centers as designated in the State Plan.

Citation: N.J.S.A. 34:1B-118.1
Title 34. Labor and Workers' Compensation
Chapter 1B. Business And Industry Promotion
Section 118. Grant limitations
L. 2004, c. 65, s. 11, Eff. June 30, 2004

“In considering the award and the amount of any grant of tax credits made..., the authority may consider, as part of the authority's overall review process, the following factors... The site of the new business location and its consistency with the smart growth goals, strategies and policies of the *State Development and Redevelopment Plan*...”

Explanation: The Act establishes the Business Retention and Relocation Assistance Grant (BRRAG) Program administered by the EDA to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated to premises outside of the State. The program may provide grants of tax credits. To be eligible, a business must demonstrate to the authority, at the time of application, that the grant of tax credits and resultant retention of full-time jobs and any capital investment will yield a net positive benefit to the State. The authority may consider the site of the business and its consistency with the State Plan land use policies.

Citation: N.J.S.A. 34:1B-129
Title 34. Labor and Workers' Compensation
Chapter 1B. Business And Industry Promotion
Section 129. Employment incentive grant criteria
L. 1996, c. 26, s. 6

“...A business may be eligible to be awarded a grant of up to 80% of the withholdings of the business or up to 50% of the estimated tax of

the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies and policies of the *State Development and Redevelopment Plan* ...as determined by and based upon criteria promulgated by the authority following consultation with the Department of Community Affairs, *Office of Smart Growth*...”

Explanation: This section of the Act describes eligibility criteria for the Business Retention and Relocation Assistance Grant (BRRAG) Program. Enhanced benefits are provided for qualifying projects if the project would represent implementation of the State Plan.

9.2.2. EDA Assistance Program Rules

Citation: N.J.A.C. 19:31-2.1
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 2. Loan Guarantee Programs
Section 1. Program description
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...In order to be eligible for structured finance assistance, an applicant shall...Demonstrate that the project is a designated industry as that term is defined in N.J.A.C. 19:31-10.2; and is located either in a Metropolitan Planning Area (PA 1), Suburban Planning Area (PA 2), *designated center* or an area designated for growth in a plan that has been endorsed by the New Jersey *State Planning Commission* at N.J.S.A. 52:18A-196 et seq...The business is not eligible for assistance under structured finance if the business has entered into an agreement for a Business Employment Incentive Program Grant at the project site...”

Explanation: In administering its loan guarantee programs, one criterion used by the EDA to evaluate eligibility is presence of the project in a growth area as designated in the State Plan.

Citation: N.J.A.C. 19:31-3.1
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 3. Direct Loan Program
Section 1. Program description
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...The maximum amount of total financing for a New Markets loan is \$ 10 million, except for projects that provide extraordinary economic development benefits when the maximum amount of total financing for a New Markets loan is \$ 25 million... For New Market Loans, the projects must be located within areas designated for smart growth land use development and designated by the New Jersey Development and Redevelopment Plan as in Planning Areas One or Two or in a *designated center* or endorsed plan. Additionally, projects must be located in communities and census tracts as approved by the Community Development Financial Institutions Fund...”

Explanation: The EDA is empowered to make direct loans to applicants that are unable to obtain funding from conventional sources even with the help of an Authority guarantee. In administering its new markets loan programs, one criterion used by the EDA to evaluate eligibility is presence in growth areas as designated in the State Plan.

Citation: N.J.A.C. 19:31-3.2
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 3. Direct Loan Program
Section 2. Eligibility standards
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...For Smart Growth Pre-development loans, projects must be located in *Planning Areas 1* and *2*, *designated centers* or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan...”

Explanation: In administering its direct loan programs, one criterion used by the EDA to give preference to eligible projects is whether they are located in a growth area as designated in the State Plan.

Citation: N.J.A.C. 19:31-10.4
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 10. Business Employment Incentive Program (BEIP)
Section 4. Amount, term of grant
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...The following criteria shall be considered when determining the grant amount and term that a business will be eligible to receive

...Whether the business is located in *planning area 1* or 2 of the State's Development and Redevelopment Plan...whether the business is located in a center designated by the *State Planning Commission* or in a municipality with an endorsed plan..."

Explanation: This subchapter defines the award amount for BEIP grants. One of the criteria to be considered when determining the award amount is whether the business is located in a SPC designated center or in a municipality with a SPC endorsed plan.

Citation: N.J.A.C. 19:31-10.7
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 10. Business Employment Incentive Program (BEIP)
Section 7. Application Procedures
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

"A business shall apply to the Authority for a grant on a form prescribed by the Authority which requires the following...Whether the business is located in *Planning Area 1* or 2 of the *State's Development and Redevelopment Plan*..."

Explanation: This subchapter defines the application procedures for BEIP grants and section 7 requires the applicant report whether it is located in Planning Areas 1 or 2 in the State Plan as part of its application for assistance.

Citation: N.J.A.C. 19:31-14.2
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 14. Business Retention And Relocation Assistance Grant (BRAGG) Program
Section 2. Definitions
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

"..."Designated urban center" means an urban center designated in the *State Development and Redevelopment Plan* adopted by the *State Planning Commission*..."

Explanation: This section describes definitions for the EDA's BRAGG program and includes a definition for designated urban center by referring to those designated in the State Plan.

Citation: N.J.A.C. 19:31-14.6

Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 14. Business Retention And Relocation Assistance Grant (BRAGG) Program
Section 6. Application submission requirements
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...Identification of the site of the new business location and its consistency with the smart growth goals, strategies and policies of the *State Development and Redevelopment Plan* established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) or if the site is outside the jurisdiction of the State Plan, evidence of approval under the applicable comprehensive management plan...”

Explanation: This section describes application submission requirements for the BRAGG program and includes information regarding a project seeking to qualify for the grants to determine whether it would be consistent with the State Plan.

Citation: N.J.A.C. 19:31-14.8
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 14. Business Retention And Relocation Assistance Grant (BRAGG) Program
Section 8. Determination of grant amount
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...Any business that is relocating between 50 and 499 full-time employees approved for a grant of tax credits shall receive a grant in an amount determined by the CEO, ...the CEO shall consider the following factors... The site of the new business location and its consistency with the smart growth goals, strategies and policies of the *State Development and Redevelopment Plan*...”

Explanation: This section describes application submission requirements to be used in determining the amount of any BRAGG award and requests information on the location of the new business and on how it is consistent with the State Plan be provided as part of the submission.

Citation: N.J.A.C. 19:31-16.2
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 16. Sales And Use Tax Exemption Program
Section 2. Definitions

R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...”Approved site” means the site of the project in the New Jersey Development and Redevelopment Plan designated **Planning Area 1** or 2 locations; however, if the site of the project is not located in either of such Planning Areas, the project involves renovation or expansion of an existing facility, and the project satisfies all other criteria of the program, as determined by the Secretary, the site may also be an approved site...”

Explanation: This section defines terms used in the EDA program on sales and use tax exemptions. The definition of an approved site includes that it be located either in Planning Areas 1 or 2 or it involves renovation or expansion of an existing facility.

Citation: N.J.A.C. 19:31-16.3
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 16. Sales And Use Tax Exemption Program
Section 3. Eligibility Criteria
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...To be an approved site, the location for the project shall be situated in designated **Planning Area 1** or 2, as defined in the **State Development and Redevelopment Plan** adopted by the **State Planning Commission**...Notwithstanding (c)1 above, a project involving the renovation or expansion of an existing facility that is not located in designated **Planning Area 1** or 2 may be eligible to participate in the program, at the determination of the Secretary, if all other applicable criteria are satisfied...”

Explanation: This section defines eligibility criteria used by the EDA in qualifying applicants for sales and use tax exemptions and reiterates the requirement that the location of a project that is the subject of the application is either in Planning Areas 1 or 2 or involves renovation or expansion of an existing facility.

Citation: N.J.A.C. 19:31-16.5
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 16. Sales and Use Tax Exemption Program
Section 5. Submission requirements
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...Each application to the Authority shall include the following information in an application format prescribed by the Authority...project information shall include the following...Identification of the site of the new business location and its consistency with the smart growth goals, strategies and policies of the *State Development and Redevelopment Plan*...or if the site is outside the jurisdiction of the State Plan, evidence of approval under the applicable comprehensive management plan...”

Explanation: This section defines submission requirements used by the EDA in evaluating applicants for sales and use tax exemptions and reiterates the requirement that the site of the new business location be either consistent with the State Plan or consistent with the Comprehensive Management Plan, as is the case of projects in the Pinelands Area.

9.3. New Jersey Film Production Assistance Act

Citation: N.J.S.A. 34:1B-178 et seq. at 187
Title 34. Labor and Workmen’s Compensation
Chapter 1B. Business and Industry Promotion
Section 187. Submission of project application; eligibility
P. 2003, c. 182, s. 1, Eff. Sept. 15, 2003

“...A business seeking to participate in the sales and use tax exemption certificate program...shall submit a project application to the New Jersey Commerce Commission in such form as required by the New Jersey Commerce Commission...The location for the project shall be situated in designated *Planning Area 1* or 2, as defined in the *State Development and Redevelopment Plan* adopted by the *State Planning Commission*; provided however, that a business project involving the renovation or expansion of an existing facility that is not located in designated *Planning Area 1* or 2 may be eligible to participate in the program, at the determination of the New Jersey Commerce Commission, if all other applicable criteria are satisfied.”

Explanation: This Act concerns the promotion of the film industry in the State. It authorizes the EDA to identify low-interest loans or tax credits that are available from the State, federal or private organizations to promote the planning and development of film projects in the State. EDA can provide financial assistance, for a period of five years after the effective date. EDA is to consider consistency with smart growth principles and the State Plan, in evaluating applications for its sales and use tax exemption certificate program.

10. MUNICIPALITIES AND COUNTIES

10.1. Municipal Land Use Law

10.1.1. Statute

Citation: N.J.S.A. 40:55D-1 et seq. at 5
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Subchapter 5. Definitions
L. 1975, c. 291, s. 1, Eff. Aug. 1, 1976

““*Office of Smart Growth*” means the *Office of State Planning*”

Explanation: The Municipal Land Use Law (MLUL) was adopted in an effort to encourage municipal action to guide the use or development of all lands in the State in an appropriate manner. The definitions section includes a definition of the Office of Smart Growth as the successor to the Office of State Planning.

Citation: N.J.S.A. 40:55D-12
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Subchapter 12. Notices of applications; requirements
L. 1975, c. 291, s. 7

“...Notice shall be given by personal service or certified mail to the *State Planning Commission* of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. The notice shall include a copy of any maps or documents required to be on file with the municipal clerk...”

Explanation: This section of the MLUL requires municipalities considering applications for large-scale development to provide notice to the SPC of any hearing on the application.

Citation: N.J.S.A. 40:55D-23.3
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 3. The Municipal Master Plan
Subchapter 23.3. Preparation; offering basic course in land use law and planning; requirement
L. 2005, c. 133, s. 2, Eff. July 7, 2005

“...The Commissioner of Community Affairs shall cause to be

prepared and offered a basic course in land use law and planning ...for current and prospective members and alternate members of local planning boards..., zoning boards of adjustment...and combined boards as authorized under law...”

Explanation: The MLUL was revised in 2005 to require the DCA to establish a program to provide certain members of local zoning boards with mandatory training in land use law and planning and to track compliance.

10.1.2. Basic Course in Land Use Law Rules

Citation: N.J.A.C. 5:87-1.6
Title 5. Community Affairs
Chapter 87. Basic Course In Land Use Law And Planning Training Program
Subchapter 1. General provisions;
Section 6. Applicability; fees; board membership
R. 2006 D. 266, Eff. July 17, 2006.
38 N.J.R. 37(a); 38 N.J.R. 3019(c)

“Municipalities shall provide to the Commissioner by September 15, 2006 and thereafter biannually, every January and July, a current list of members, their addresses, the date of their appointment to the board, and the date of their term expiration, using GovConnect at <http://www.nj.gov/dca/lgs/> or by completing the List of Planning/Zoning Officials form available on the *Office of Smart Growth* website...”

Explanation: The mandatory training program for municipal zoning board members includes reporting requirements of current membership of local zoning boards to OSG and/or GovConnect.

Citation: N.J.A.C. 5:87-3.3
Title 5. Community Affairs
Chapter 87. Basic Course In Land Use Law And Planning Training Program
Subchapter 3. Mandatory Curriculum of Training Program
Section 3. The municipal master plan
R. 2006 D.266, Eff. July 17, 2006.
38 N.J.R. 37(a); 38 N.J.R. 3019(c)

“Required areas for discussion in this segment shall include, but are not limited to: ...The processes of cross-acceptance, *plan endorsement* and center designation set forth in the *State Planning*

Act, N.J.S.A. 52:18A-203 et seq., and the State Planning Rules, N.J.A.C. 5:85; and...Discussion on smart growth planning principles, redevelopment, center-based development, transit villages, clustering and transfer of development rights and zoning as planning concepts and tools available to planning boards to implement the vision of the master plan for balancing future development and conservation in the municipality...”

Explanation: The mandatory training program for municipal zoning board members includes discussion of the plan endorsement process and rules as well as a more general discussion of smart growth planning principles.

Citation: N.J.S.A. 40:55D-28
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 3. The Municipal Master Plan
Subchapter 28. Preparation; contents; modification
L. 1975, c. 291, sec. 19; Eff. March 29, 2004 (except see note below).

“The master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan to (1) the master plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located, (3) the *State Development and Redevelopment Plan*...and (4) the district solid waste management plan required pursuant to the provisions of the "Solid Waste Management Act,"...of the county in which the municipality is located.”

Explanation: The MLUL provides guidance to municipalities in exercising the authority to plan and zone land uses. Article 3 concerns developing master plans and defines municipal contents of a master plan as including a specific policy statement regarding the relationship of the proposed development as described in the master plan to the State Plan and others.

Note: Section 40 of L. 2004, c. 2 provides: "This act shall take effect 180 days next following enactment, except that section 12 shall take effect immediately." Chapter 2, L. 2004, was approved on March 29, 2004.

10.2. An Act Concerning Residential Site Improvement Standards

10.2.1. Statute

Citation: N.J.S.A. 40:55D-40.1 et seq. at 40.4
Title 40. Counties and Municipalities
Chapter 55D. Planning, Zoning, Etc.
Subchapter 40.4. Submission of recommendations for Statewide site improvement standards for residential development
L. 1993, c. 32, s. 1

“The board shall...prepare and submit to the commissioner recommendations for Statewide site improvement standards for residential development. The site improvement standards shall implement the recommendations with respect to streets, off-street parking, water supply, sanitary sewers and stormwater management of Article Six (with the exhibits appended thereto) of the January 1987 "Model Subdivision and Site Plan Ordinance" prepared for the department by The Center for Urban Policy Research at Rutgers, The State University, except to the extent that the recommendations set forth in the "Model Subdivision and Site Plan Ordinance" are inconsistent with the requirements of other law...”

Explanation: This Act establishes the Site Improvement Advisory Board, in but not of, the DCA. The composition and functions of the Board are described and include making recommendations for site improvement standards. The Legislature found that municipal standards for review of site plans and subdivisions were non-uniform and unpredictable and added to the costs of development. It concluded that improving the application process is best served by establishing a uniform set of technical site improvement standards for land development. The purpose of the Board and its standards is to streamline the approval process by increasing efficiency.

10.2.2 Residential Site Improvement Standard Rules

Citation: N.J.A.C. 5:21-3.5
Title 5. Community Affairs
Chapter 21. Residential Site Improvement Standards
Subchapter 3. Exceptions, waivers and special area standards
Section 5. Special area standards
R. 2006 D. 359, Eff. October 24, 2007
38 N.J.R. 4949(a); 39 N.J.R. 4925(a)

“The Commissioner and the Site Improvement Advisory Board as a matter of policy recognize the need for preservation and/or enhancement of community character in New Jersey municipalities. This section is intended to provide a procedure whereby a municipal approving authority may develop and recommend to the Board supplementary and/or alternative standards in the form of municipal ordinances for review and amendment to this chapter. The Site Improvement Advisory Board shall solicit the input of the Department of Environmental Protection, the *Office of Smart Growth*, and the Department of Transportation, and may solicit input from public or private organizations and individuals as it deems appropriate during the process of review of special area standards. Examples of a special area may include..Municipalities in the Metropolitan (*Planning Area 1*), and Regional Centers, villages, hamlets, or other Centers identified by the *State Development and Redevelopment Plan* or designated by the *State Planning Commission*...”

Explanation: The RSIS rules provide for the Advisory Board to maintain some flexibility in application of its standards. This section deals with a procedure for supplemental or alternative standards to be reviewed and considered as a basis for amending the standards based on local conditions. The Board may request the input of OSG during the review of special area standards.

Citation: N.J.A.C. 5:21-7 Appendix B
Title 5. Community Affairs
Chapter 21. Residential Site Improvement Standards
Subchapter 7. Stormwater Management
R. 2005 D.56, Eff. February 7, 2005
36 N.J.R. 4025(a), 37 N.J.R. 481(c)

“...Definitions of words and terms used in N.J.A.C. 7:8-5 and 6...
"Designated Center" means a *State Development and Redevelopment Plan* Center as designated by the State Planning Commission such as urban, regional, town, village, or hamlet...
"*State Development and Redevelopment Plan* Metropolitan Planning Area (PA1)" means an area delineated on the State Plan Policy Map and adopted by the State Planning Commission that is intended to be the focus for much of the State's future redevelopment and revitalization efforts....State Plan Policy Map" is defined as the geographic application of the *State Development and Redevelopment Plan's* goals and Statewide policies, and the official map of these goals and policies...”

Explanation: Standards for residential site improvement regarding stormwater

management include definitions for designated center and the State Plan.

10.3. An Act Regarding Stormwater Management Planning

10.3.1. Statute

Citation: N.J.S.A. 40:55D-93
Title 40. Counties and Municipalities
Chapter 55D. Municipal Land Use Law
Subchapter 93. Preparation, stormwater control ordinances to implement; date of completion; reexamination
L. 1981, c. 32, s. 1, eff. Feb. 12, 1981. In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 8, Stormwater Management, was extended by gubernatorial directive from February 2, 2011 to August 2, 2012. See: 43 N.J.R. 620(b)

“Every municipality in the State shall prepare a stormwater management plan and a stormwater control ordinance or ordinances to implement said plan. Such a stormwater management plan shall be completed ... The plan shall be reexamined at each subsequent scheduled reexamination of the master plan pursuant thereto. Such a stormwater control ordinance or ordinances shall be adopted within 1 year of the completion of the stormwater management plan and shall be revised thereafter as needed...”

Explanation: This section of the Act concerns the municipal obligation to prepare a stormwater management plan and to adopt a stormwater control ordinance, consistent with regulations adopted by DEP. The plans are to be submitted to the county planning agency or county water resources agency which will approve, approve with conditions or disapprove of the plan or ordinances.

10.3.2. Stormwater Management Rules

Citation: N.J.A.C.7:8-1.2
Title 7. Water and Water Supply
Chapter 8. Stormwater Management
Subchapter 1. General Provisions
Section 2. Definitions
R. 2004, D. 48 and D. 61, Eff. February 2, 2004
35 N.J.R. 119(a), 35 N.J.R. 1328(a), 35 N.J.R. 4220(a), 36 N.J.R. 607(a), 36 N.J.R. 781(a)

“The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Designated Center" means a *State Development and Redevelopment Plan* Center as designated by the *State Planning Commission* such as urban, regional, town, village, or hamlet.

"State Development and Redevelopment Plan Metropolitan Planning Area (PA1)" means an area delineated on the State Plan Policy Map and adopted by the *State Planning Commission* that is intended to be the focus for much of the State's future redevelopment and revitalization efforts.

"Urban Redevelopment Area" is defined as previously developed portions of areas:

1. Delineated on the State Plan Policy Map (SPPM) as the Metropolitan Planning Area (PA1), *Designated Centers*, Cores or Nodes;
2. Designated as CAFRA Centers, Cores or Nodes;
3. Designated as Urban Enterprise Zones; and
4. Designated as Urban Coordinating Council Empowerment Neighborhoods.”

Explanation: DEP adopted rules to implement the statutory requirements that municipalities adopt stormwater management plans and ordinances. The definitions section of the rules includes terms from the State Plan.

10.4. Burlington County Transfer of Development Rights (TDR) Demonstration Act

Citation: N.J.S.A. 40:55D-113 et seq. at 116(b)
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 16. Burlington County TDR
Section 116. Development Transfers
L. 1989, c. 86, s. 1.; Eff. June 5, 1989

“The *Office of State Planning*...shall provide such technical assistance as may be requested by municipalities or the county planning board, and as may be reasonably within the capacity of the office to provide, for the purpose of providing for development transfers pursuant to the provisions of this act.”

Explanation: The Act establishes a TDR pilot program in Burlington County to determine the feasibility of implementing such a program on a state-wide basis. Section 116 directs OSP to provide technical support and to carry out responsibilities described in the Act at N.J.S.A. 55D-121

and 123.

Citation:

N.J.S.A. 40:55D-121(d)
Title 40. Municipalities and Counties
Chapter 40:55D. Planning, Zoning, Etc.
Article 16. Burlington County TDR
Section 121. Review, recommendations by county planning board,
CADB, Office of state Planning
L. 1989, c. 86, s. 9; Eff. Jun. 5, 1989

“The *Office of State Planning* shall review the record of comment of the county planning board, and the development transfer ordinance and supporting documentation, and within 60 days approve, approve with conditions, or disapprove the transfer ordinance stating in writing the reasons therefor. Failure of the *Office of State Planning* to approve, approve with conditions, or disapprove the development transfer ordinance within the 60-day period constitutes approval of the ordinance...”

Explanation:

The TDR demonstration act requires the county planning board to evaluate a development transfer ordinance prepared by a municipality and makes recommendations on it. After the county reviews the ordinance, OSP reviews the record and the ordinance and supporting documents. The basis for OSP review is compliance with the Act, accuracy of the information in the report and plans and an assessment of the potential of successful implementation of the ordinance.

Citation:

N.J.S.A. 40:55D-123
Title 40. Municipalities and Counties
Chapter 40:55D. Planning, Zoning, Etc.
Article 16. Burlington County TDR
Section 123. 3-year, six-year reviews; prevention of repeal
L. 1989, c. 86, s 11; Eff. June 5, 1989

“...The development transfer ordinance shall be reviewed by the planning board and governing body of the municipality at the end of six years subsequent to enactment... If at least 30% of the development potential available on the market at market value has not been transferred at the end of this six-year period, the municipal governing body shall repeal the development transfer ordinance within 90 days of the end of the six-year period unless one of the following is met:...the municipality can demonstrate either future success or can demonstrate that low levels of development transfer activity is due not to ordinance failure but to low levels of development demand in general. This demonstration shall require the concurrence of the county planning board and the *Office of State*

Planning, and shall be the subject of a municipal public hearing conducted prior to a final determination regarding the future viability of the development transfer program...”

Explanation: The TDR demonstration act requires the municipality to review its TDR program after six years. If certain benchmarks are not attained, the municipality must repeal the TDR ordinance unless it purchase credits, or if low demand in general is responsible or if sending zone landowners still favor it. This demonstration must have the concurrence of both the county planning board and the Office of State Planning in order to allow the TDR program to continue.

Citation: N.J.S.A. 40:55D-129
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 16. Burlington County TDR
Section 129. Reports; analysis
L. 1989, c. 86, s. 19; Eff. June 5, 1989

“The county planning board shall submit copies of these reports along with an analysis of the effectiveness of the ordinances in achieving the purposes of this act to the **State Planning Commission** on July 1 of the third year next following enactment of this act.

c. The **State Planning Commission** shall submit, to the Governor, the President of the Senate, and to the Speaker of the General Assembly 90 days subsequent to receiving the report from the Burlington county planning board, copies of its analysis along with its recommendations as to the advisability of enacting transfer of development rights enabling legislation on a Statewide basis.”

Explanation: Progress on the Burlington County TDR Demonstration Act is to be analyzed by the county in reports to be submitted to the SPC, which shall in turn make recommendations as to the advisability of enacting TDR enabling legislation on a statewide basis and submit them to the Governor and Legislature.

10.5. Permit Extension Act of 2008

Citation: N.J.S.A. 40:55D-136.1 et seq. at 136.3
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Subtitle 3. Municipality Provisions
Article 17. Extension of Permits
Definitions relative to extension of certain permits and approvals
L. 2008, c. 78, s. 3, Eff. September 6, 2008; amended 2009, c. 336, s.

1; Eff. January 18, 2010

”Approval means, except as otherwise provided in section 4 of this act, any...*plan endorsement* and center designations pursuant to the “*State Planning Act*”

” Environmentally sensitive area" means an area designated pursuant to the *State Development and Redevelopment Plan* ... as Planning Area 4B (Rural/Environmentally Sensitive), Planning Area 5 (Environmentally Sensitive), or a critical environmental site;...”

Explanation: This Act is intended to address the economic downturn through suspension of certain expiration dates for permits and approvals. The purpose is to avoid expiration of approved development applications due to an inability to proceed because of economic constraints. Permits and approvals in environmentally sensitive areas are not extended. This section of the Act defines relevant terms. The term “approval” defines certain approvals where the Act applies and includes SPC designated centers. The term “environmentally sensitive area” defines certain approvals where the Act does not apply. SPC designated centers were extended to the extent that, prior to center designation, were outside of an environmentally sensitive area.

Note: 2009 amendment, by Chapter 336, substituted "December 31, 2012" for "July 1, 2010" in the definition of "Extension period."

Citation: N.J.S.A. 40:55D-136.4
Title 40. Municipalities and Counties
Chapter. 55D. Planning, Zoning, Etc.
Article 17. Extension of Permits
Subchapter 136.4. Existing government approval; extension period
L. 2008, c. 78, s. 4, Eff. Date: September 6, 2008; amended 2009, c. 336, s. 1; Eff. January 18, 2010

“Nothing in this act shall be deemed to extend or purport to extend... any coastal center designated pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), that as of March 15, 2007 (a) had not submitted an application for *plan endorsement* to the *State Planning Commission*, and (b) was not in compliance with the provisions of the Coastal Zone Management Rules at N.J.A.C.7:7E-5B.6.”

Explanation: The extensions authorized by the Act are limited with respect to coastal centers. Only those coastal centers, designated pursuant to CAFRA, in municipalities that had submitted an application for plan endorsement to the SPC by March 15, 2007 and were in compliance

with provisions of the DEP's Coastal Zone Management Rules.

10.6. State Transfer of Development Rights Act

10.6.1. Statute

Citation: N.J.S.A. 40:55D-137 et seq. at 139
Title 40. Counties and Municipalities
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
Section 139. Transfer of development potential
L. 2004, c. 2, s. 3; Eff. September 25, 2004

“The *Office of Smart Growth* shall provide such technical assistance as may be requested by municipalities or a county planning board, and as may be reasonably within the capacity of the office to provide, in the preparation, implementation or review, as the case may be, of the master plan elements required to have been adopted by the municipality as a condition for adopting a development transfer ordinance..., capital improvement program or development transfer ordinance.”

Explanation: The State TDR Act was established to create a process for municipalities or regional entities to create a program to transfer development rights from sending zones to receiving zones. The transfer is intended to protect environmental resources that would otherwise be developed using private investment rather than rely exclusively on public funds to purchase development rights of these resources. OSG is to provide technical assistance in preparing the plan elements that are required prior to adopting a TDR ordinance.

Citation: N.J.S.A 40:55D-140
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
Subchapter 140. Actions required prior to adopting or amending ordinance
L. 2004, c. 2, s. 4; Eff. September 25, 2004

“Prior to the adoption or amendment of any development transfer ordinance, a municipality shall:...Either receive approval of: (1) its initial petition for endorsement of its master plan by the *State Planning Commission* ...and regulations adopted pursuant thereto either individually, or as part of a county or regional plan, provided that the petition included the development transfer ordinance and

supporting documentation, or (2) the development transfer ordinance and supporting documentation as an amendment to a previously approved petition for master *plan endorsement* by the *State Planning Commission ...*”

Explanation: The Act requires that prior to either adoption or amendment of a TDR ordinance, a number of steps must be followed, including a municipality individually or as part of a county or regional plan, receiving approval of its petition for initial plan endorsement by the SPC. In addition, a Real Estate Market Analysis (REMA) must be performed to evaluate the likely success of the program.

Citation: N.J.S.A. 40:55D-144
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
Subchapter 144. Composition of sending zones
L. 2004, c. 2, s. 8, Eff. September 25, 2004.

“A sending zone shall be composed predominantly of land having one or more of the following characteristics: (3) other improved or unimproved areas that should remain at low densities for reasons of inadequate transportation, sewerage or other infrastructure, or for such other reasons as may be necessary to implement the *State Development and Redevelopment Plan ...* and local or regional plans.”

Explanation: Goals and objectives of the State Plan are to be considered when selecting sending areas. In selecting land for a sending zone in a TDR program, the zone is composed predominantly of land having one or more characteristics, one of which is that the areas should remain at low densities for reasons of inadequate transportation, sewerage or other infrastructure or for other reasons as may be necessary to implement the State Plan and local regional plans.

Note: See: N.J.A.C. 85:7-1 et seq. (rules for plan endorsement)

Citation: N.J.S.A. 40:55D-150
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
Section 150. Formal comments and recommendations
L. 2004, c. 2, s. 14, Eff. September 25, 2004

“If the county planning board does not recommend enactment, the reasons therefor shall be clearly stated in the formal comments. If the

objections of the county planning board cannot be resolved to the satisfaction of both the municipality and the county planning board within an additional 30 days, the municipality shall petition the *Office of Smart Growth* to render a final determination...”

Explanation: The Act defines a procedure for reviewing TDR ordinances including county planning board review. If there is an objection by the county planning board that cannot be resolved, the municipality is to request OSG to render a final decision.

Citation: N.J.S.A. 40:55D-151
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
151. Review of Petition by Office of Smart Growth
L. 2004, c. 2, s. 15, Eff. September 25, 2004

“When the *Office of Smart Growth* receives a petition..., it shall review the petition, the record of comment of the county planning board, any supporting documentation submitted by the municipality, and any comments received from property owners in the sending or receiving zones and other members of the public. Within 60 days after receipt of the petition, the *Office of Smart Growth* shall approve, approve with conditions, or disapprove the proposed development transfer ordinance, stating in writing the reasons therefor.” The basis for review by the *Office of Smart Growth* shall be: ... and d. Consistency with any plan that applies to the municipality that has been endorsed by the *State Planning Commission* ...”

Explanation: In the TDR ordinance review process, if conflicts between a county planning board and municipality remain unresolved, the municipality submits a petition to OSG to render a final determination. OSG reviews the record, including the ordinance and supporting materials, and either approves, approves with conditions or disapproves the proposed transfer ordinance.

Citation: N.J.S.A. 40:55D-152
Title 40. Counties and Municipalities
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
Section 152. Approval by Office of Smart Growth
L. 2004, c. 2, s. 16, Eff. September 25, 2004

“If the *Office of Smart Growth* determines...that the proposed development transfer ordinance may be approved, the municipality

may proceed with adoption of the proposed ordinance. If the *Office of Smart Growth* determines that the proposed ordinance may be approved with conditions, the *Office of Smart Growth* shall make such recommendations as may be necessary for the proposed ordinance to be approved... The decision by the *Office of Smart Growth* on the petition shall have the effect of a final agency action and any appeal of that decision shall be made directly to the Appellate Division of the Superior Court.”

Explanation: The role of OSG is to provide recommendations to render a proposed TDR ordinance fit for adoption once a municipality has petitioned the office for review. OSG’s decision on the matter is a final agency action.

Citation: N.J.S.A. 40:55D-154
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
Section 154. Ordinance presumed to be no longer reasonable
L. 2004, c. 2, s. 18, Eff. September 25, 2004

“The absence of either of the following shall constitute a rebuttable presumption that a development transfer ordinance is no longer reasonable: a. *Plan endorsement* pursuant to P.L. 1985, c. 398 (C. 52:18A-196 et seq.) or regulations adopted pursuant thereto is no longer in effect for that municipality...”

Explanation: For a TDR program to work it must be implemented. Success also depends on maintaining the zoning agreed upon in the TDR program. If the underlying structure of the program is changed significantly or if the commitment of the community to State Plan consistency (as measured by maintaining plan endorsement status) is lost, then validity of the TDR ordinance is lost.

Citation: N.J.S.A. 40:55D-155
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
Section 155. Review by planning board, governing body after three years
L. 2004, c. 2, s. 18, Eff. September 25, 2004

“A development transfer ordinance and real estate market analysis shall be reviewed by the planning board and governing body of the municipality at the end of three years subsequent to its adoption. This review shall include an analysis of development potential transactions

in both the private and public market, an update of current conditions in comparison to the development transfer plan element of the master plan...and capital improvement program...and an assessment of the performance goals of the development transfer program, including an evaluation of the units constructed with and without the utilization of the development transfer ordinance. A report of findings from this review shall be submitted to the county planning board, the *Office of Smart Growth* and, when the sending zone includes agricultural land, the CADB for review and recommendations. Based on this review the municipality shall act to maintain and enhance the value of development transfer potential not yet utilized...”

Explanation: This section of the Act requires an assessment of a TDR program after it has been established for 3 years. The assessment is to be submitted in the form of a report to OSG and the county planning board and the County Agriculture Development Board (CADB) if the sending zone includes agricultural land.

Citation: N.J.S.A. 40:55D-156
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
156. Five-year review after adoption
L. 2004, c. 2, s. 20, Eff. September 25, 2004

“...A development transfer ordinance and the real estate market analysis also shall be reviewed by the planning board and governing body of the municipality at the end of five years subsequent to its adoption...c. The municipality can demonstrate either future success or can demonstrate that low levels of development potential transfer activity are due, not to ordinance failure, but to low levels of development demand in general. This demonstration shall require the concurrence of the county planning board and the *Office of Smart Growth*, and shall be the subject of a municipal public hearing conducted prior to a final determination regarding the future viability of the development transfer program...”

Explanation: A municipal and county assessment of progress of the TDR program is required after five years. If less than 25% of development has been transferred by that time, then one of four conditions must be met. If the municipality can demonstrate lack of performance is due to reduced demand generally or there is reason to expect success in the future, then the TDR ordinance may still be presumed to be valid. OSG and the county planning board must agree with any such findings of the municipality in order for the TDR ordinance to remain valid.

Citation: N.J.S.A. 40:55D-162
Title 40. Municipalities and Counties
Chapter 55D. Planning, Zoning, Etc.
Article 18. State Transfer of Development Rights
Section 162. Annual report
L. 2004, c. 2, s. 26, Eff. September 25, 2004

“The governing body of a municipality that adopts a development transfer ordinance shall annually prepare and submit a report on activity undertaken pursuant to the development transfer ordinance to the county planning board... (b) The county planning board shall submit copies of these reports along with an analysis of the effectiveness of the ordinances in achieving the purposes...to the *State Planning Commission*...”

Explanation: The TDR program is to be tracked to assure there is a commitment and action to implement it. There are annual reporting requirements for municipalities that have adopted a development transfer ordinance. The reports are to be provided to the county planning board, which forwards the reports with an analysis of the effectiveness of the TDR program to the SPC.

10.6.2. Real Estate Market Analysis Report Rules

Citation: N.J.A.C. 5:86-1.3
Title 5. Community Affairs
Chapter 86. Transfer of Development Rights REMA Report
Subchapter 1. General Provisions
Section 3. Definitions
R. 2006, D. 18, Eff. January 3, 2006
37 N.J.R. 2592(a), 38 N.J.R. 126(b)

“...“Base zoning” means either the zoning in place as of one year prior to the municipal enactment of a transfer of development rights ordinance or the zoning in place less than one year prior to the municipal enactment of the transfer of development rights ordinance provided that the zoning was adopted by the municipality for purposes of achieving consistency with a master plan that has received initial or advanced *plan endorsement* from the *State Planning Commission* pursuant to N.J.A.C. 5:85-7”...

Explanation: These rules were adopted to implement the requirement in the State TDR Act at N.J.S.A. 40:55D-140(d) for the planning board to prepare a REMA as part of a compliant TDR program. This section of the

rules includes a definition of base zoning that refers to the zoning that was in place either one year prior to municipal enactment of a TDR ordinance or less than a year if the zoning was performed as a requirement of plan endorsement in order to achieve consistency with the State Plan.

Citation:

N.J.A.C. 5:86-3.2
Title 5. Community Affairs
Chapter 86. Transfer of Development Rights REMA Report
Subchapter 3. Review of Market Analysis Report
Section 2. Office of Smart Growth
R. 2006, D. 18, Eff. January 3, 2006
37 N.J.R. 2592(a), 38 N.J.R. 126(b)

“...Two paper copies and one electronic copy of the final market analysis report shall be sent to the *Office of Smart Growth* no later than 10 days after its completion, and at least 15 days prior to planning board hearing required pursuant to N.J.S.A. 40:55D-148.

(b) The *Office of Smart Growth* shall be officially notified of the planning board hearing required pursuant to N.J.S.A. 40:55D-148 at least 15 days prior to said hearing.

(c) The *Office of Smart Growth's* evaluation of the proposed TDR program will consider the findings of the real estate market analysis report, and the results of said analysis will be incorporated into its report to the *State Planning Commission* regarding the municipality's petition for plan endorsement pursuant to N.J.S.A. 40:55D-140(e) and N.J.A.C. 5:85-7...”

Explanation:

The rules explain the manner in which a REMA is performed, the format of the resulting findings in a report and the submission requirements. Section 3.2 deals with submission requirements to OSG, which must be done prior to a planning board hearing to consider final adoption of a TDR ordinance.

10.7. Local Authorities Fiscal Control Law

10.7.1. Statute

Citation:

N.J.S.A. 40A:5A-1 et seq. at 10
Title 40A. Municipalities and Counties
Chapter 5A. Local Authorities Fiscal Control Law
Section 10. Submission of Budget
L. 1983, c. 313; amended by L. 1987, c. 319, s. 5.

“a. Each authority shall submit a budget for each fiscal year to the director prior to its adoption thereof. The budget shall comply with the terms and provisions of any bond resolutions, and shall be in such form and detail as to items of revenue, expenditure and other content as shall be required by law or by rules and regulations of the Local Finance Board. b. The Local Finance Board shall prescribe by rule or regulation the procedure for the adoption of budgets by authorities....”

Explanation: The Legislature found it to be in the public interest to maintain financial integrity and stability of local authorities by providing for state review of project financing to avoid an undue financial burden by authorities on residents. The Act requires state agency oversight of financial operations of local authorities, including that of municipalities and counties, through review by the DCA Division of Local Government Services as well as approvals by the Local Finance Board. The dissolution of an authority is authorized if it is in the public interest.

10.7.2. Local Authorities Rules

Citation: N.J.A.C. 5:31-2.2
Title 5. Community Affairs
Chapter 31. Local Authorities
Subchapter 2. Budgets
Section 2. Capital budget and capital program
R. 2005 D. 348, Eff. Sept. 21, 2005
37 N.J.R. 1277(a), 37 N.J.R. 3975(a)

“(a) Every authority shall prepare and adopt a capital budget, in conjunction with its annual budget, for any year in which it proposes to undertake a capital project....(g) Every capital budget and program submitted to the Division shall include a budget message, which shall consist of brief statements addressing the following matters:...4. Whether any proposed capital improvement plan has a State Plan *designated center*, including goals and objectives thereof...”

Explanation: The rules require that each year a local authority intends to undertake a capital project, in addition to its annual budget, it must also prepare a capital budget and program which must be submitted to the Division of Local Government Services and Local Finance Board. One issue that must be addressed in the capital budget is a statement regarding whether the improvement is located in a State Plan designated center.

10.8. Local Redevelopment and Housing Law

Citation: N.J.S.A. 40A:12A-1 et seq. at 7
Title 40A. Municipalities and Counties
Chapter 12A. Local Redevelopment and Housing Law
Subchapter 7. Adoption of redevelopment plan
L. 1992, c. 79, s. 7; amended 2008, c. 46, s. 2, Eff. July 17, 2008

“The redevelopment plan shall include an outline for the planning, development, redevelopment, or rehabilitation of the project area sufficient to indicate:...(5) Any significant relationship of the redevelopment plan to (a) the master plans of contiguous municipalities, (b) the master plan of the county in which the municipality is located, and (c) the *State Development and Redevelopment Plan* adopted pursuant to the “*State Planning Act*,” ...”

Explanation: The Legislature found that deterioration in housing, commercial and industrial facilities may need public effort to ameliorate the conditions. The Act was adopted to simplify various enactments regarding local redevelopment and housing in order for the process to be more efficient. Redevelopment activities covered under the Local Redevelopment and Housing Law are performed outside of the jurisdiction of the MLUL. This Act establishes a separate procedure to arrest and reverse conditions of deterioration in housing, commercial and industrial installations to promote community interests through redevelopment. The Act codifies many aspects of redevelopment law that have been interpreted by the courts and also consolidates prior enactments relating to local redevelopment and housing. Section 7 concerns adoption of a redevelopment plan through a local ordinance. The plan is to define its relationship to the State Plan.

Citation: N.J.S.A. 40A:12A-67
Title 40A. Municipalities and Counties
Chapter 12A. Local Redevelopment and Housing Law
Subchapter 67. Issuance of bonds by municipality
L. 2001, c. 310, s. 4, Eff. Mar. 4, 2002

“...A financial instrument...shall be subject to the review and approval of the board. That review and approval shall be made prior to approval of, in the case of a municipality, an introduced ordinance or, in the case of an authority, a resolution. The board shall be entitled to receive from the applicant an amount sufficient to provide for all

reasonable professional and other fees and expenses incurred by it for the review, analysis and determination with respect thereto. As part of its review, the board shall specifically solicit comments from the ***Office of State Planning*** and the New Jersey Economic Development Authority in addition to comments from the public. As part of the board's review and approval, it shall consider where appropriate one or more of the following: whether the redevelopment project or plan promotes approaches and concepts to reduce congestion; enhance mobility; assist in the redevelopment of our municipalities; and otherwise improve the quality of life of our citizens...”

Explanation: This section of the Act establishes procedures for issuance of financial instruments to assist a redeveloper in funding a redevelopment project. Section 77 concerns how a municipality may issue a financial instrument to fund redevelopment activities. The Local Finance Board reviews applications for the authority to issue the instrument. The Board is required to solicit comments from OSP and EDA as part of its review process.

11. PUBLIC UTILITIES

11.1. Board of Public Utilities Act

11.1.1. Statute

Citation: N.J.S.A. 48:2-1 et seq. at 13 and 23
Title 48. Public Utilities
Chapter 2. Department of Public Utilities; Board of Commissioners
L. 1948, c. 90, s. 5

“...The board shall have general supervision and regulation of and jurisdiction and control over all public utilities as defined in this section and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Title...The board may... require any public utility to furnish safe, adequate and proper service, including furnishing and performance of service in a manner that tends to preserve and conserve the quality of the environment and prevent the pollution of the waters, land, and air of this State...”

Explanation: This Act establishes the Board of Public Utilities (BPU), including its duties and authority to regulate certain utility providers. It is empowered to set standards for utility providers to furnish safe, adequate and proper service in a manner that tends to preserve the environment and prevent pollution.

Citation: N.J.S.A. 48:2-27
Title 48. Public Utilities
Chapter 2. All Utilities
Subchapter 27. Extension of Facilities

“The Board may, after hearing, upon notice, by order in writing, require any public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities where, in the judgment of the board, the extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same...”

Explanation: This section of the Act grants the Board regulatory authority over extensions of services by regulated entities. The Board, after hearing, may require a utility to construct and operate any extension where the Board determines that extension: is reasonable and practicable; will

furnish sufficient business to justify construction; and when the financial condition of utility reasonably warrants the original expenditure.

Note: See In Re Centex, 411 N.J. Super. 244, 985 A.2d 649. The court held that the statute granting BPU authority to order public utilities to extend public services only granted BPU authority to require a utility to pay for an extension. The statute did not grant BPU the authority to prohibit a utility from voluntarily paying for an extension. The legislative intent underlying the statute did not have land use or environmental concerns as main purposes.

11.1.2. Utility Extension Rules

Citation: N.J.A.C. 14:3-8.2
Title 14. Public Utilities
Chapter 3. All Utilities
Subchapter 8. Extensions to Provide Regulated Services
Section 2. Definitions
R. 2008 D. 119, Eff. April 10, 2008
39 N.J.R. 4077(b), 40 N.J.R. 2481(a)

““Center designation” or “***designated center***” means a center that has been officially recognized as such by the ***State Planning Commission*** in accordance with its rules at N.J.A.C. 5:85 or in the Pinelands Area, a center recognized as such pursuant to a valid Memorandum of Agreement between the New Jersey Pinelands Commission and the New Jersey ***State Planning Commission***.

“Designated growth area” means an area depicted on the New Jersey ***State Planning Commission*** State Plan Policy Map as:

1. ***Planning Area 1*** (Metropolitan Planning Area, or PA-1);
2. ***Planning Area 2*** (Suburban Planning Area, or PA-2);
3. A ***designated center***;
4. An area identified for growth as a result of a petition for municipal ***plan endorsement*** that has been approved by the ***State Planning Commission*** pursuant to N.J.A.C. 5:85-7;
5. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (l) of section 6 of N.J.S.A. 13:17-6; or...

“New Jersey ***State Planning Commission***” means the commission established by the ***State Planning Act***, N.J.S.A. 52:18A-196 et seq...

“Planning area” has the meaning assigned to the term in the rules of the ***State Planning Commission*** at N.J.A.C. 5:85-1.4. As of December 20, 2004, this term is defined in those rules to mean an area of greater than one square mile that shares a common set of conditions, such as population density, infrastructure systems, level

of development, or environmental sensitivity. The *State Development and Redevelopment Plan* sets forth planning policies that serve as the framework to guide growth in the context of those conditions...
"*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 the *Office of State Planning*, described at N.J.S.A. 52:18A-201..."

Explanation: The rules include a definition for "designated growth area" which includes Planning Areas 1 and 2 and designated centers.

Note: As of March 2005, the Board's Main Extension rules at N.J.A.C. 14:3-8.1 et seq. govern whether and how a regulated entity may contribute financially to an extension made in response to an application for an extension. See Note for N.J.A.C. 14:3-8.6 below.

Citation: N.J.A.C. 14:3-8.6
Title 14. Public Utilities
Chapter 3. All Utilities
Subchapter 8. Extensions to Provide Regulated Services
Section 6. Costs for extension serving an area not designated for growth
R. 2008 D. 119, Eff. April 10, 2008
39 N.J.R. 4077(b), 40 N.J.R. 2481(a)

"This section governs a regulated entity's authority to pay for or contribute financially to an extension or portion thereof, which has been requested solely to serve development in an area not designated for growth, as defined at N.J.A.C. 14:3-8.2. The section phases out a regulated entity's authority to pay for such an extension or portion thereof. The requirements in this section apply in addition to those of N.J.A.C. 14:3-8.5.

(b) If a regulated entity chooses to construct additional capacity, not requested by the applicant and greater than the capacity required under N.J.A.C. 14:3-8.3(e), the cost of that additional capacity shall not be governed by this section but shall be governed by N.J.A.C. 14:3-8.5(i).

(c) After January 1, 2007, both of the following shall apply:
1. A regulated entity shall not pay for or financially support an extension or portion thereof described at (a) above except pursuant to an exemption under N.J.A.C. 14:3-8.8; and
2. The Board shall not consider the cost of the extension when determining the regulated entity's rates under N.J.S.A. 48:2-21."

Explanation: While certain extensions to serve Designated Growth Areas could be provided by the utility free of charge or after the payment of a refundable deposit, in areas not Designated for Growth, utilities were (with limited exceptions) prohibited from contributing to the cost of a utility extension and therefore, applicants were required to pay the full cost of the extension.

Note: On December 30, 2009, the Appellate Division issued a decision (See In Re Centex, 411 N.J. Super. 244, 985 A.2d 649) finding that the Main Extension Rules prohibiting utility payments for extensions within an Area Not Designated for Growth were inconsistent with the Board's statutory authority over utility main extensions, at N.J.S.A. 48:2-27. Following the Centex decision, the Board issued directives to all utilities requiring them to process all applications for extensions as if they were within a Designated Growth Area. The Board is currently in the process of drafting proposed comprehensive amendments to the rules consistent with this decision.

Citation: N.J.A.C. 14:3-8.8
Title 14. Public Utilities
Chapter 3. All Utilities
Subchapter 8. Extensions to Provide Regulated Services
Section 8. Exemptions from cost limits on areas not designated for growth
R. 2008 D. 119, Eff. April 10, 2008
39 N.J.R. 4077(b), 40 N.J.R. 2481(a)

“To obtain an exemption based on a significant public good, a person shall demonstrate to the Board that all of the following criteria are met...The project or activity served by the extension would provide a significant benefit to the public or to the environment...the project...is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the *Office of Smart Growth*...and...There is no practicable alternative means of providing the benefit while still complying with this subchapter. This shall include a showing of why it is not possible or practicable to build the project in an area designated for growth...”

Explanation: The main line utility rules included exemptions. The significant public good exemption requires a showing that the benefit of the project outweighs that of the benefits of smart growth. The BPU consults with the OSG in making this determination.

Citation: N.J.A.C. 14:3-8.12
Title 14. Public Utilities
Chapter 3. All Utilities
Subchapter. 8. Extensions to Provide Regulated Services
Section 12. Smart growth infrastructure investment program (SGIIP)
R. 2008 D. 119, Eff. April 10, 2008
39 N.J.R. 4077(b), 40 N.J.R. 2481(a)

“This section sets forth the process to cover certain infrastructure investments under a smart growth infrastructure investment program (SGIIP). Under a SGIIP, the costs of infrastructure shall be governed by the same rules that apply to extensions serving designated growth areas at N.J.A.C. 14:3-8.7, except that the following shall apply... The regulated entity may include the cost of necessary relocations, upgrades, and expansions of infrastructure, which are necessary to serve new customers, in the costs covered by the SGIIP... a SGIIP area is any area in a municipality that is located in **planning area 1**, and for which the municipality has obtained appropriate formal endorsement from the **State Planning Commission**.

Explanation: The BPU has established a program (Smart Growth Infrastructure Investment Program or SGIIP) for certain infrastructure costs with preferable treatment being given to municipalities in Planning Area 1 that have obtained endorsement from the SPC.

11.1.3. Targeted Revitalization Incentive Program Rules

Citation: N.J.A.C. 14:3-10.1
Title 14. Board of Public Utilities
Chapter 14. All Utilities
Subchapter 10. Targeted Revitalization Incentive Program (TRIP)
Section 1. Purpose, scope, general provisions
R.2008 D.119, Eff. April 10, 2008
39 N.J.R. 4077(b); 40 N.J.R. 2481(a)

““TRIP area" means an area that meets one or more of the following criteria:

1. The area is within a **Planning Area 1** and the municipality has received initial **plan endorsement** for the area from the **State Planning Commission** in accordance with N.J.A.C. 5:85-7.1; and
2. The area is within a Planning Area 2, 3, 4, or the municipality has received advanced **plan endorsement** for the area from the **State Planning Commission** in accordance with N.J.A.C. 5:85-7.1, and the **Office of Smart Growth** has recommended consideration of the area for a TRIP...”

Explanation: TRIP is a pilot program intended to remove infrastructure-related barriers to development in certain areas designated for growth. Under a TRIP, the Board may, on a pilot basis, authorize a regulated entity to charge customers for the costs of installing certain infrastructure in a specific area in order to build the necessary capacity to serve planned and prospective development that is described in a municipal master plan, and is approved by the SPC through either growth area designations in the State Plan or as revised in plan endorsement.

Citation: N.J.A.C. 14:3-10.2
Title 14. Board of Public Utilities
Chapter 14. All Utilities
Subchapter 10. Targeted Revitalization Incentive Program (TRIP)
Section 2. “TRIP Area” defined
R. 2008 D. 119, Eff. April 10, 2008
39 N.J.R. 4077(b); 40 N.J.R. 2481(a)

“...If at any time the Board determines that the municipal master plan or zoning and ordinances are no longer consistent with the State Plan or principles of smart growth, or if the *State Planning Commission* revokes the previously granted *plan endorsement* pursuant to N.J.A.C. 5:85-7.13, all activities under the TRIP shall stop within three months after the Board determination or the Commission's revocation, whichever is earlier...”

Explanation: TRIP is a pilot program intended to remove infrastructure-related barriers to development in certain areas designated for growth. A condition of continued participation in the program, in which a municipality has been authorized by BPU to assess a TRIP charge, is that its master plan or zoning and ordinances must remain consistent with the State Plan.

Citation: N.J.A.C. 14:3-10.4
Title 14. Board of Public Utilities
Chapter 14. All Utilities
Subchapter 10. Targeted Revitalization Incentive Program (TRIP)
Section 4. Initial Board approval of a TRIP
R. 2008 D. 119, Eff. April 10, 2008
39 N.J.R. 4077(b); 40 N.J.R. 2481(a)

“...This section sets forth the process by which the Board may authorize, on a pilot basis, coverage of certain infrastructure costs under a Targeted Revitalization Incentive Program (TRIP). Under a TRIP, the Board may authorize a regulated entity to recover costs of infrastructure installed in a TRIP area through a TRIP charge

approved under this subchapter...To obtain Board approval of a TRIP, a regulated entity and a municipality shall jointly apply to the Board and shall present the following information in a format provided by the Board...Evidence that the municipality has obtained the applicable designation or endorsement required for a TRIP area from the *State Planning Commission*...”

Explanation: TRIP is a pilot program intended to remove infrastructure-related barriers to development in certain areas designated for growth. A condition of participation in the program is designation or endorsement of the TRIP area by the SPC.

Citation: N.J.A.C. 14:3-10.5
Title 14. Board of Public Utilities
Chapter 3. All Utilities
Subchapter 10. Targeted Revitalization Incentive Program (TRIP)
R. 2008 D.119, Eff. April 10, 2008
39 N.J.R. 4077(b), 40 N.J.R. 2481(a)

“Annual TRIP adjustment petition...After eligible investments have begun, the regulated entity and the municipality shall submit an annual TRIP adjustment petition to the Board in a format provided by the Board and shall include the following types of information:
1. Detailed descriptions of all eligible investments and the development, existing and prospective, served by infrastructure constructed under the TRIP;...6. An update of the utility infrastructure plan submitted under N.J.A.C. 14:3-10.4(b), showing any changes necessitated by changes in development patterns, municipal plans or zoning, or any other causes. The updated utility infrastructure plan shall be consistent with all local plans and ordinances, and with the State Plan...”

(d) In determining whether to approve an additional year of the TRIP, the Board shall consider, at a minimum, the following... Whether the planned and prospective development continues to be consistent with the *State Development and Redevelopment Plan* and all applicable local plans and laws...”

Explanation: Continued participation in BPU’s TRIP program depends on whether the infrastructure investments and the planned and prospective development they are designed to serve, continues to be consistent with the State Plan.

Citation: N.J.A.C. 14:3-10.6
Title 14. Board of Public Utilities
Chapter 14. All Utilities

Subchapter 10. Targeted Revitalization Incentive Program (TRIP)
Section 6. Termination of a TRIP
R. 2008 D. 119, Eff. April 10, 2008
39 N.J.R. 4077(b); 40 N.J.R. 2481(a)

“...If at any time the Board determines that the municipal master plan or zoning and ordinances are no longer consistent with the State Plan or principles of smart growth, or if the *State Planning Commission* revokes the previously granted *plan endorsement* pursuant to N.J.A.C. 5:85-7.13, all activities under the TRIP shall stop within three months after the Board determination or the Commission's revocation, whichever is earlier...”

Explanation: A TRIP may be revoked if it is no longer consistent with the State Plan or if the SPC has revoked a previously granted plan endorsement.

12. STATE DEPARTMENTS

12.1. An Act Concerning Preparation of State Capital Improvement Plan

Citation: N.J.S.A. 52:9S-1 et seq. at 3
Title 52. State Government, Departments and Offices
Chapter 9S. Commission on Capital Budget and Planning
3. Preparation of State Capital Improvement Plan
L. 1975, c. 208, s. 3; Eff. 1975

“The commission shall each year prepare a State Capital Improvement Plan containing its proposals for State spending for capital projects, which shall be consistent with the goals and provisions of the *State Development and Redevelopment Plan* adopted by the *State Planning Commission* and shall be prepared after consultation with the New Jersey Council of Economic Advisors...Copies of the plan shall be submitted to the Governor and the Legislature no later than December 1 of each year.”

Explanation: This Act creates the NJ Commission on Capital Budget and Planning, defines its composition and directs it to prepare an annual State Capital Improvement Plan that contains proposals for State spending for capital projects. Members of the Commission include the public at large as well as representatives from the Legislature and the Executive Branch. The plan is to be consistent with the goals and provisions of the State Plan.

12.2. An Act Regarding a Joint Committee on Housing Affordability

Citation: N.J.S.A. 52:9RR-1 et seq. at 4
Title 52. State Government
Chapter 9RR. Housing Affordability, Joint Committee
4. Powers, duties of committee
L. 2007, c. 55, s. 4; Eff. Date: March 15, 2007

“The committee is authorized, empowered and directed to conduct a continuing study of the availability and provision of housing affordable to all New Jersey households, the financing and administration of programs providing affordable housing, the rules, regulations or actions promulgated or enforced by various State government entities, including but not limited to, departments, boards, bureaus, commissions, or agencies, that may negatively

impact the affordability of housing, and land use policies and other issues related to making housing affordable, for the purpose of making recommendations for legislative action, including amendments to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or to the "**State Planning Act**," P.L.1985, c.398 (C.52:18A-196 et al.), or to any other statute as it deems practicable and desirable for the provision of opportunities for the affordability and availability of housing for all residents throughout the State.”

Explanation: The Legislature noted that in the 20 years since adoption of the Fair Housing Act, conflicting public policies on land use and planning have resulted in a lack of a coordinated approach by the State in addressing issues regarding affordable housing. This Act creates a Joint Committee on Housing Affordability to provide oversight of housing availability in the State. The Committee is charged with conducting a study of the availability and provision of affordable housing, financing and administration of programs regarding same, and making recommendations for legislative action including amendments to the Fair Housing Act or State Planning Act that may be appropriate in order to assure affordable housing opportunities for residents are available throughout the State.

12.3. Administrative Procedures Act

12.3.1. Statute

Citation: N.J.S.A. 52:14B-1 et seq. at 4.1B
Title 52. State Government
Chapter 14B. Administrative Procedure and Regulatory Flexibility
L. 1968, c. 410, s.1, Eff. Sept. 1, 1969

“In proposing a rule for adoption, the agency involved shall issue a smart growth development impact analysis regarding the rule, which shall be included in the notice of a proposed ruleEach smart growth development impact analysis shall contain:...and (3) A description as to whether the proposed rule will affect in any manner new construction within **Planning Area 1** or 2, or within **designated centers**, under the **State Development and Redevelopment Plan**... This subsection shall not apply to any proposed rule which the agency finds would impose an insignificant impact, either because the scope of the regulation is minimal, or there is an extreme unlikelihood that the regulation would evoke a change in the housing production within **Planning Area 1** or 2, or within **designated centers**, under the **State Development and Redevelopment Plan**. The agency's finding and an indication of the basis for its finding shall be

included in the notice of a proposed rule...”

Explanation: The process of State agency rulemaking includes requirements to evaluate impacts of adopting the various rules. The Smart Growth Development Impact Analysis includes an evaluation of the impact the rule would have on the type and number of housing units in growth areas designated in the State Plan.

12.3.2 Administrative Procedures Act Rules

Citation: N.J.A.C. 1:30-5.1
Title 1. Administrative Law
Chapter 30. Rules For Agency Rulemaking
Subchapter 5. Proposal Procedure
Section 1. Notice of proposed rule
R. 2006 D. 283, Eff. July 14, 2006
38 N.J.R. 1117(a), 38 N.J.R. 3159(a)

“Where the law requires that an agency give notice of its rulemaking proceedings, the agency shall prepare a "notice of proposal" and submit the notice to the OAL. The notice of proposal shall comply with the requirements of this section....(c) The notice of proposed rule shall include a brief statement of the proposed rulemaking, which shall include, in the following order:...

8. A smart growth impact statement which shall describe the impact of the proposed rule on the achievement of smart growth and implementation of the ***State Development and Redevelopment Plan.***”

Explanation: Administrative procedures for State agency rulemaking require that the notice of proposal for the rulemaking include a variety of impact statements. One of the impact statements is the impact of the rule on achieving implementation of the State Plan.

12.4. An Act Regarding Expedited Permits

Citation: N.J.S.A. 52:27D-10.2
Title 52. State Government
Chapter 27D. Department of Community Affairs
10.2 Definitions relative to Smart Growth Ombudsman
L. 2004, c. 89, s. 3, Eff. July 9, 2004

"As used in sections...52:27D-10.3 and...52:27D-10.4 "Smart growth area" means an area designated pursuant to P.L. 1985, c. 398 (C. 52:18A-196 et seq.) as ***Planning Area 1*** (Metropolitan), Planning

Area 2 (Suburban), a *designated center*, or a designated growth center in an endorsed plan.”

Explanation: The enabling legislation for the DCA was revised to add the function of the Smart Growth Ombudsman. In the definitions section, the term “smart growth area” includes areas designated for growth in the State Plan.

Note: E.O. 45 (2005)

Citation: N.J.S.A. 52:27D-10.4
Title 52. State Government
Chapter 27D. Department of Community Affairs
10.4 Duties of the Smart Growth Ombudsman
L. 2004, c. 89, s. 3, Eff. July 9, 2004

"The Smart Growth Ombudsman shall: d. review any new rules or regulations proposed by any State agency and determine whether the proposed rules or regulations, as they pertain to the smart growth areas, are consistent with the *State Development and Redevelopment Plan*. In the event that the Smart Growth Ombudsman determines that the proposed rules or regulations in the smart growth areas are not consistent with the *State Development and Redevelopment Plan*, the Smart Growth Ombudsman shall return the proposed rules or regulations to the State agency with recommended amendments necessary to make the proposed rules or regulations consistent with the *State Development and Redevelopment Plan*. A State agency shall not file proposed new rules or regulations for publication in the New Jersey Register unless and until the Smart Growth Ombudsman determines the proposed rules or regulations in the smart growth areas are consistent with the *State Development and Redevelopment Plan*. The requirements of this section may be waived upon a written determination by the Chief Counsel to the Governor that the proposed rules or regulations are required to implement a federal or State mandate.”

Explanation: The enabling legislation for the DCA was revised to add the function of the Smart Growth Ombudsman (SGO). In this section, the duties of the Ombudsman are outlined and include reviewing all State agency proposed regulations prior to publication in the NJ Register. The Ombudsman is to determine whether the rules as proposed are consistent with the State Plan, as they pertain to smart growth areas. If inconsistency is found the Ombudsman is to make recommendations as to amendments that would be necessary for the rules to be consistent with the State Plan. The agency is prohibited from filing the regulations for publication in the NJ Register unless

the SGO determines that in the smart growth areas, they are consistent with the State Plan.

Citation: N.J.S.A. 52:27D-10.5
Title 52. State Government
Chapter 27D. Department of Community Affairs
10.5 Definitions relative to smart growth in DCA and expedited permits
L. 2004, c. 89, s. 3, Eff. July 9, 2004

"As used in section...52:27D-10.6... "Smart growth area" means an area designated pursuant to P.L. 1985, c. 398 (C. 52:18A-196 et seq.) as **Planning Area 1** (Metropolitan), Planning Area 2 (Suburban), a **designated center**, or a designated growth center in an endorsed plan..."

Explanation: The enabling legislation for the DCA was revised to add the function of the Smart Growth Ombudsman. In this section, the definition of smart growth area, as it pertains to section 52:27D-10.6, includes an area designated for growth in the State Plan.

12.5. Fair Housing Act

12.5.1. Statute

Citation: N.J.S.A. 52:27D-304
Title 52. State Government
Chapter 27D. Department of Community Affairs
Subchapter 304. Definitions
L. 1985, c. 222, s. 1, Eff. July 2, 1985

““Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. In determining prospective need, consideration shall be given to approvals of development applications, real property transfers and economic projections prepared by the **State Planning Commission** established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).”

Explanation: The Fair Housing Act was the legislative response to the Mount Laurel judicial decisions regarding opportunities for affordable housing. The Act regulates the provision of affordable housing through the State. It created COAH, in but not of the DCA, to adopt criteria and guidelines to administer a program to monitor appropriate

provision of affordable housing. This section defines the term “prospective need” which is a projection of housing needs based on prospective growth, which projection is to be prepared by the SPC.

Citation: N.J.S.A. 52:27D-307
Title 52. State Government
Chapter 27D. Department of Community Affairs
Subchapter 307. Duties of Council
L. 1985, c. 222, s. 7

“It shall be the duty of the council... Adopt criteria and guidelines for: (1) Municipal determination of its present and prospective fair share of the housing need in a given region which shall be computed for a 10-year period. (2) Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or environmental or historic preservation factors and adjustments shall be made whenever... The pattern of development is contrary to the planning designations in the ***State Development and Redevelopment Plan***...”

Explanation: In administering its duties to adopt criteria and guidelines for adjustments to municipal fair share housing obligations, pursuant to the Fair Housing Act, the Council is required to make adjustments whenever the pattern of development is contrary to the planning designations in the State Plan.

Citation: N.J.S.A. 52:27D-312
Title 52. State Government
Chapter 27D. Department of Community Affairs
Subchapter 312. Regional Contribution Agreements
L. 1985, c. 222, s. 12

“regional contribution agreements shall be approved by the council, after review by the county planning board or agency of the county in which the receiving municipality is located. The council shall determine whether or not the agreement provides a realistic opportunity for the provision of low and moderate income housing within convenient access to employment opportunities. The council shall refer the agreement to the county planning board or agency which shall review whether or not the transfer agreement is in accordance with sound, comprehensive regional planning. In its review, the county planning board or agency shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan, and the ***State development and redevelopment plan***. In the event that there is no county planning board or agency in the county in which the receiving

municipality is located, the council shall also determine whether or not the agreement is in accordance with sound, comprehensive regional planning. After it has been determined that the agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities, and that the agreement is consistent with sound, comprehensive regional planning, the council shall approve the regional contribution agreement by resolution...”

Explanation: In this section of the Act, regional contribution agreement is evaluated either by the county planning board or COAH to determine if it is consistent with the county master plan and the State Plan.

Citation: N.J.S.A. 52:27D-320
Title 52. State Government
Chapter 27D. Department of Community Affairs
Article 9. Department of Community Affairs Act
Subchapter. 320. New Jersey Affordable Housing Trust Fund
L. 1985, c. 222, s. 20

“There is established in the Department of Community Affairs a separate trust fund, to be used for the exclusive purposes as provided in this section, and which shall be known as the "New Jersey Affordable Housing Trust Fund." The fund shall be a non-lapsing, revolving trust fund, and all monies deposited or received for purposes of the fund shall be accounted for separately, by source and amount, and remain in the fund until appropriated for such purposes. The fund shall be the repository of all State funds appropriated for affordable housing purposes... the commissioner shall establish rules and regulations governing the qualifications of applicants, the application procedures, and the criteria for awarding grants and loans and the standards for establishing the amount, terms and conditions of each grant or loan...”

Explanation: This section of the Act creates a NJ Affordable Housing Trust Fund for providing financial support to entities providing affordable housing in the State. COAH is given discretion to determine the regional allocation of the funds based on the region’s percentage of the State’s low and moderate income housing need.

12.5.2 Neighborhood Preservation Balanced Housing Program Rules

Citation: N.J.A.C. 5:43-1.1
Title 5. Community Affairs
Chapter 43. Neighborhood Preservation Balanced Housing Program

R. 2010 D. 266, Eff. October 20, 2010
42 N.J.R. 1280(a); 42 N.J.R. 2753(d)

“The purpose of the Neighborhood Preservation Balanced Housing Program is to provide municipalities, for-profit and non-profit developers with financial assistance needed to spur the development of affordable housing across the State, in conformance with the *State Development and Redevelopment Plan* and in fulfillment of Section 20 of the Fair Housing Act of 1985, as amended. The Balanced Housing subsidy provides a critical source of gap financing for affordable housing projects whose other sources of public subsidy and private financing are not sufficient to sustain economic viability....”

Explanation: The Program was established to support the construction and preservation of permanent, high quality, location efficient affordable housing that meets the demand for units affordable to low and moderate income families and individuals residing in New Jersey in a manner that is consistent with the State Plan. It is administered by the Division of Housing and Community Resources in the DCA.

Citation: N.J.A.C. 5:43-2.6
Title 5. Community Affairs
Chapter 43. Neighborhood Preservation Balanced Housing Program
Subchapter 2. Funding
Section 6. Review criteria
R. 2010 D. 266, Eff. October 20, 2010
42 N.J.R. 1280(a); 42 N.J.R. 2753(d)

“The Department shall evaluate eligible projects based on the criteria listed below. The Department shall favor the following:
1. Projects that are located in those geographic areas or neighborhoods that have been designated by the Governor, Commissioner and/or the *State Planning Commission* as locations appropriate for intensive redevelopment.”

Explanation: One criterion used in assessing projects for funding under the Balanced Housing Program is whether they are located in locations designated by the SPC for intensive redevelopment.

Citation: N.J.A.C. 5:43, Appendix M
Title 5. Community Affairs
Chapter 43. Neighborhood Preservation Balanced Housing Program
Subchapter. Balanced Housing Green Building Requirements

“...Siting and Land use...Follow smart growth principles as set forth

in the *State Development and Redevelopment Plan*...”

Explanation: Requirements for qualifying for the Balanced Housing Green Building program include siting the projects in a manner that is consistent with the State Plan.

12.5.3. Substantive Rules of COAH for the Period August 4, 1986 through June 5, 1994

Citation: N.J.A.C. 5:92-1.3
Title 5. Community Affairs
Chapter 92. Substantive Rules of the New Jersey Council on Affordable Housing for the Period August 4, 1986 through June 5, 1994
Subchapter 1. General Provisions
Section 3. Definitions
R. 2006 D. 174, Eff. April 13, 2006
37 N.J.R. 4607(a), 37 N.J.R. 2120(a)

“*State Development Redevelopment Plan* (SDRP)” means the State plan for development promulgated by the *State Planning Commission* pursuant to P.L. 1985 c.398 (C.52:18A-196 et seq.).”

Explanation: The rules include a definition of the State Plan.

Note: This section pertains to COAH’s first round rules. There have been three rounds of rulemaking since the inception of the program.

Citation: N.J.A.C. 5:92 Appendix F
Title 5. Community Affairs
Chapter 92. Substantive Rules of COAH for the Period August 4, 1986 through June 5, 1994 Technical Appendix
Appendix F. County Review Checklist
R. 1986 D. 333, Eff. August 4, 1986.
18 N.J.R. 1124(b), 18 N.J.R. 1527(a)

“... The Act allows a municipality to transfer up to 50 percent of its low and moderate income housing obligation to a willing receiving municipality. The terms of this transfer are determined by the individual negotiations between willing sending and receiving municipalities within the same housing region as adopted by the Council.

Recognizing the need for sound regional comprehensive planning, the Act permits the county of the receiving municipality to review the

proposed RCA and submit its comments and recommendations to the Council. The Act indicates that this review shall be performed by the county planning board or other designated agency and that in its review, the county "shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan and the *State Development Redevelopment Plan*..."

Explanation: The first round of COAH rules allowed municipalities to agree to a transfer of up to 50% from one municipality to another within a housing region of its affordable housing obligation. The relevant county, through its planning board, is authorized to review the proposed transfer and submit comments and recommendations to COAH. One of the considerations is consistency of the transfer with the State Plan.

12.5.4. Substantive Rules of COAH for the Period Beginning June 6, 1994

Citation: N.J.A.C. 5:93-1.3
Title 5. Community Affairs
Chapter 93. Substantive Rules of the New Jersey Council on Affordable Housing for the Period August 4, 1986 through June 5, 1994
Subchapter 1. General Provisions
Section 3. Definitions
R. 2009 D. 339, Eff. October 16, 2009
41 N.J.R. 2757(a), 41 N.J.R. 4194(b)

““Center” means a compact form of development with a core or node (focus of residential, commercial and service development) and a community development area that ranges in scale from an urban center to a regional center, town, village, and hamlet. This definition is in accord with and derived from the *State Development and Redevelopment Plan*.”

Explanation: The rules include a definition of the term “center” and indicate that this definition is in accord with and derived from the State Plan.

Note: This section pertains to COAH’s second round rules. Chapter 93 was readopted as R. 2009 d. 339; Eff. October 16, 2009 and expires on October 16, 2014.

Amended regulations permitting the State Council on Affordable Housing (COAH) to grant certification of municipal fair share plans relying on inclusionary development sites lacking access to sewer infrastructure approved by Department of Environmental Protection

(DEP) did not weaken Council's reliance on State Development and Redevelopment Plan (SDRP) or its efforts at consistency with Plan's goals; it merely gave municipalities some flexibility in applying for DEP sewer approval at the same time they submitted their housing element to COAH for certification, and if DEP denied approval, municipality would still have to find an alternative way to satisfy its fair share obligation. In re Adoption of Amendments to N.J.A.C., 772 A.2d 9 (2001).

Citation:

N.J.A.C. 5:93-4.2
Title 5. Community Affairs
Chapter 93. Substantive Rules of COAH for the Period Beginning June 6, 1994
Subchapter 4. Municipal Adjustments
Section 2. Lack of Land
R. 2009 D. 339, Eff. October 16, 2009
41 N.J.R. 2757(a); 41 N.J.R. 4194(b)

“The Council shall review the existing land use map and inventory to determine which sites are most likely to develop for low and moderate income housing. All vacant sites shall initially be presumed to fall into this category. In addition, the Council may determine that other sites, that are devoted to a specific use which involves relatively low-density development would create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP *planning areas one*, two and three; driving ranges; nurseries; and nonconforming uses. The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development.”

Explanation:

This section describes how municipal requests for vacant land adjustments to the affordable housing obligation are addressed. COAH reserves the right to deny a request to exclude farmland outside of State Plan designated growth areas if the land is being used as farmland.

Citation:

N.J.A.C. 5:93-5.4
Title 5. Community Affairs
Chapter 93. Substantive Rules of COAH for the Period Beginning June 6, 1994
Subchapter 5. Preparing a Housing Element
Section 4. New construction; conformance with the State Development and Redevelopment Plan (SDRP)
R. 2009 D. 339, Eff. October 16, 2009
41 N.J.R. 2757(a); 41 N.J.R. 4194(b)

“(a) In **Planning Areas 1** and 2, as designated in the SDRP, the Council shall encourage inclusionary development within centers. However, municipalities may locate inclusionary developments within the environs as defined in the SDRP.

(b) In Planning Area 3, the Council shall encourage inclusionary development within centers. Where a municipality proposes an inclusionary site within Planning Area 3 outside of a center, the Council may permit such a site if infrastructure is available or can be easily extended from Planning Area 2.

(c) In Planning Areas 4 or 5, as designated in the SDRP, the Council shall require inclusionary development to be located in centers. Where the Council determines that a municipality has not created a realistic opportunity within the development boundaries of a center to accommodate that portion of the municipal inclusionary component that the municipality proposes to address within the municipality, the Council shall require the municipality to identify an expanded center(s) or a new center(s) and submit the expanded or new center(s) to the **State Planning Commission** for designation.

(d) In municipalities that are divided by more than one Planning Area, the following principles shall apply: 1. The Council shall encourage and may require the use of sites in **Planning Areas 1** and 2 prior to approving inclusionary sites in Planning Areas 3, 4 and 5 that lack sufficient infrastructure; 2. The Council shall encourage and may require the use of sites within Planning Area 3 prior to approving inclusionary sites in Planning Areas 4 and 5 that would require the expansion of existing infrastructure; and 3. The Council shall encourage and may require the use of sites to which existing infrastructure can easily be extended prior to approving inclusionary sites that require the creation of new infrastructure in an area not presently serviced by infrastructure...”

Explanation: COAH rules describe how satisfaction of the municipal obligation to provide opportunities for affordable housing is to be satisfied consistent with the State Plan. Plans for zoning for inclusionary development in Planning Areas 4 and 5 require that the inclusionary development be in existing centers.

Citation: N.J.A.C. 5:93-13.1
Title 5. Community Affairs
Chapter 93. Substantive Rules of COAH for the Period Beginning June 6, 1994
Subchapter 13. Site Specific Relief and the State Development and

Redevelopment Plan (SDRP)
Section 1. Purpose and Scope
R. 2009 D. 339, Eff. October 16, 2009
41 N.J.R. 2757(a), 41 N.J.R. 4194(b)

“...The Fair Housing Act at N.J.S.A. 52:27D-307 directs the Council to "give appropriate weight" in carrying out its duties to the implementation of the SDRP. It is the purpose of this subchapter to outline the way in which the goals and policies of the SDRP will be considered by the Council in awarding the site specific relief to an objector to a municipal housing element. This process relies upon the SDRP's definitions of "*Planning Areas*" and "Centers." The principles outlined in the subchapter are illustrated in Appendix F.”

Explanation: COAH rules describe how decisions on requests by an objector to a municipality’s Fair Share Housing Plan aims to satisfy its assigned affordable housing obligation and indicates that “appropriate weight” must be given to implementation of the State Plan when rendering these decisions.

Citation: N.J.A.C. 5:93-13.2
Title 5. Community Affairs
Chapter 93. Substantive Rules of COAH for the Period Beginning June 6, 1994
Subchapter 13. Site Specific Relief and the State Development and Redevelopment Plan (SDRP)
Section 2. Site-specific relief in Planning Areas 1 and 2
R. 2009 D. 339, Eff. October 16, 2009
41 N.J.R. 2757(a); 41 N.J.R. 4194(b)

“When considering granting site-specific relief to an objector in *Planning Area 1* or 2, the Council shall grant such relief if the Council determines that the objector's site is available, approvable, developable and suitable.”

Explanation: COAH rules describe how decisions on requests for relief by an objector to a municipality’s Fair Share Housing Plan are handled for projects in areas designated as in Planning Area 1 or 2 in the State Plan. The decision is based on whether the objector could show there is a reasonable opportunity that development is likely to occur based on factors defining reasonable access as refined in case law findings.

Citation: N.J.A.C. 5:93-13.3
Title 5. Community Affairs

Chapter 93. Substantive Rules of COAH for the Period Beginning June 6, 1994
Subchapter 13. Site Specific Relief and the State Development and Redevelopment Plan (SDRP)
Section 3. Site specific relief in Planning Area 3
R. 2009 D. 339, Eff. October 16, 2009
41 N.J.R. 2757(a); 41 N.J.R. 4194(b)

“When considering granting site-specific relief to an objector in Planning Area 3, the Council shall determine if the RDP within the development boundaries of centers and **Planning Areas 1** and/or 2 is adequate to address the municipal inclusionary component.

1. If the objector's site is located within a center, the Council shall presumptively grant relief if the site is available, approvable, developable and suitable.

2. If the RDP within the development boundaries of centers and **Planning Areas 1** and/or 2 is adequate to address the municipal inclusionary component and the objector's site is not located in a center, the Council shall deny relief to the objector.

3. If the RDP within the development boundaries of centers and **Planning Areas 1** and/or 2 is not adequate to address the municipal inclusionary component: i. The Council shall grant relief to sites that are suitable if it determines the site lies within a center or **Planning Area 1** and/or 2; has access to infrastructure; or that infrastructure can be easily extended from Planning Area 2; ii. Where the objector's site does not lie within a center or **Planning Area 1** and/or 2, does not have access to infrastructure or where infrastructure cannot be easily extended from Planning Area 2, the Council shall render a decision on granting relief after consideration of: (1) A report from the **Office of State Planning** that contains recommendations pertaining to the appropriateness of the area surrounding the objector's site for center designation; and (2) The presence of other suitable sites serviced by infrastructure or to which infrastructure can easily be extended from Planning Area 2...”

Explanation: COAH rules describe how decisions on requests for relief by an objector to a municipality’s Fair Share Housing Plan are handled for projects in areas designated as Planning Area 3 in the State Plan. The decision is based on concerns such as the availability of infrastructure or the appropriateness of making extensions to existing infrastructure. Additional considerations are recommendations provided in writing from OSP and the availability of other suitable sites having infrastructure access or where such can be easily extended from Planning Area 2.

Citation: N.J.A.C. 5:93-13.4

Title 5. Community Affairs
Chapter 93. Substantive Rules of COAH for the Period Beginning
June 6, 1994
Subchapter 13. Site Specific Relief and the State Development and
Redevelopment Plan (SDRP)
Section 4. Site specific relief in Planning Areas 4 and 5
R. 2009 D. 339, Eff. October 16, 2009
41 N.J.R. 2757(a); 41 N.J.R. 4194(b)

“When considering granting site specific relief to an objector in
Planning Areas 4 and 5, the Council shall determine if the RDP
within the development boundaries of centers and Planning Areas 1
and/or 2 is adequate to address the municipal inclusionary
component.

1. If the objector's site is located within a center, the Council shall
presumptively grant relief if the site is available, approvable,
developable and suitable.
2. If the RDP within the development boundaries of centers and
Planning Areas 1 and/or 2 is adequate to address the municipal
inclusionary component, and the objector's site is not located in a
center, the Council shall deny relief to the objector.
3. If the RDP within the development boundaries of centers and
Planning Areas 1 and/or 2 is not adequate to address the municipal
inclusionary component, the Council shall render a decision on
granting relief after consideration of a report from the **Office of State
Planning** that contains recommendations pertaining to the
appropriateness of the area surrounding the objector's site for center
designation.”

Explanation: COAH rules describe how decisions on requests for relief by an
objector to a municipality’s Fair Share Housing Plan is handled for
projects in areas designated as Planning Areas 4 or 5 in the State
Plan. The decision is based on availability of sites in centers within
the area or sites in Planning Areas 1 or 2 within the municipality.
COAH will consider a report from OSP when making its decision.

Citation: N.J.A.C. 5:93-13 Appendix A
Title 5. Community Affairs
Chapter 93. Substantive Rules of COAH for the Period Beginning
June 6, 1994
Subchapter 13. Site Specific Relief and the State Development and
Redevelopment Plan (SDRP)
Appendix A. Methodology
R. 2009 D. 339, Eff. October 16, 2009
41 N.J.R. 2757(a); 41 N.J.R. 4194(b)

“...Undeveloped Land--Undeveloped land in the community that can accommodate development. All undeveloped land in the community is estimated through use of land satellite imagery (LANDSAT). The undeveloped land inventory is compiled via LANDSAT information prepared for the Council on Affordable Housing by the Department of Environmental Resources of Cook College at Rutgers University. It reflects photoimagery as of March 1991...Undeveloped land is further refined by the *State Development and Redevelopment Plan's Planning Areas*. To be sensitive to *the State Planning Commission's* goals for each Planning Area, undeveloped land is weighted as follows...”

Explanation: COAH rules describe the methodology used to decide how requests for relief by an objector to a municipality’s Fair Share Housing Plan is handled using photoimagery data for the site and creating a weighted scale based on Planning Areas to determine how and to what extent sites can accommodate development.

Citation: N.J.A.C. 5:93-13 Appendix F
Title 5. Community Affairs
Chapter 93. Substantive Rules of COAH for the Period Beginning June 6, 1994
Appendix F. State Planning Commission Memorandum of Understanding and Flow Charts
R. 2009 D. 339, Eff. October 16, 2009
41 N.J.R. 2757(a); 41 N.J.R. 4194(b)

“...WHEREAS, in 1985, also in response to the Mt. Laurel decisions, the New Jersey legislature enacted the *State Planning Act* (N.J.S.A. 52:18A-196 et seq.) to replace the State Development Guide Plan with a *State Development and Redevelopment Plan* (State Plan) to be used as a tool for assessing suitable locations for infrastructure, housing, economic growth and conservation; and

WHEREAS, both the *State Planning Act* and the Fair Housing Act recognize (1) the interdependence of planning for infrastructure and planning for low and moderate income housing; (2) the importance of maximizing the use of existing infrastructure in determining suitable locations for development, and (3) the importance to comprehensive planning of the phasing of infrastructure development with inclusionary development; and

WHEREAS, on June 12, 1992 the *State Planning Commission* adopted the first *State Development and Redevelopment Plan* pursuant to the *State Planning Act*; and...

NOW, THEREFORE, in consideration of the promises contained in this Memorandum of Understanding, the Commission and the Council hereby agree to the following Basic Principles:

...A cooperative planning process will be established and maintained between the Council and the Commission that will advance coordinated and comprehensive planning in the State, will result in greater predictability in planning with respect to meeting the mandates of the Council and the Commission, and will thereby benefit State agencies, counties, municipalities and the public interest... The *State Plan's* Resource Planning and Management Map (RPMM), which includes planning areas, identified centers, *designated centers*, environs and critical environmental/historic sites, provides the Council with a framework for allocating housing need and locating sites based on considerations of infrastructure availability, environmental sensitivity, and historic preservation... All planning areas can accommodate growth and therefore can accommodate a commensurate housing obligation, in a manner consistent with the goals, objectives and policies of the State Plan... Centers are the preferred mechanism for accommodating growth and inclusionary developments in each *planning area*, in a manner consistent with the goals, objectives and policies of the State Plan.

...The Commission accepts the Council's definition pursuant to N.J.A.C. 5:92-1, of developable, available, approvable and suitable sites and realistic development potential, and the Council accepts the Commission's definitions, pursuant to the State Plan, of urban and community infrastructure, centers and environs, identified and *designated centers* and critical environmental/historic sites... The Council will use the State Plan to allocate regional housing need based on planning areas within each municipality...”

Explanation: COAH and the SPC entered into a Memorandum of Understanding to assure that implementation of the COAH rules was accomplished in a manner consistent with the State Plan.

12.5.5. Substantive Rules of COAH for the Period Beginning December 20, 2004

Citation: N.J.A.C. 5:94-1.1
Title 5. Community Affairs
Chapter 94. Substantive Rules of COAH for the Period Beginning December 20, 2004
Subchapter 1. General Provisions
Section 1. Introduction
R. 2009 D. 303, Eff. September 11, 2009

41 N.J.R. 1561(a); 41 N.J.R. 3797(a)

“...Both the Court and the Legislature wanted to establish a system that would provide a realistic opportunity for housing, not litigation. As the Court stated in upholding the Fair Housing Act, "The legislative history of the Act makes it clear that it had two primary purposes: first, to bring an administrative agency into the field of lower income housing to satisfy the Mount Laurel obligation; second, to get the courts out of that field." The Council's "growth share" methodology allows each municipality to determine its capacity and desire for growth in a way that is consistent with the policies of the *State Development and Redevelopment Plan*; its Mount Laurel obligation arises as a share of that growth. These rules are, therefore, designed to be both more flexible and less negotiable...”

Explanation: The introduction to the second round rules justifies the growth share approach as a way to get the courts out of the field of affordable housing.

These rules became effective on December 20, 2004, with amendments through October 20, 2008, and govern affordable housing obligations for the period 1999-2014 for municipalities that received third round substantive certification prior to January 25, 2007.

Note: In re Adoption of N.J.A.C. 5:94 & 5:95 By New Jersey Council on Affordable Housing, 390 N.J. Super. 1, 914 A.2d 348, 2007 N.J. Super. (App. Div. 2007). In a multifaceted challenge to the validity of the substantive rules of COAH for the third round that calculate affordable housing needs from 1999 to 2014 and establish criteria for satisfaction of the need between 2004 and 2014, the following methodologies were invalidated: COAH's use of filtering in calculating statewide and regional housing need, pursuant to N.J.A.C. 5:94, Appendix A at 94-42; the growth share rules to the extent that the methodology relied on unissued data, permitted voluntary compliance, and excluded job growth and housing growth resulting from rehabilitation and redevelopment; the regulations that permit municipalities to provide affordable housing without offsetting benefits; and N.J.A.C. 5:94-4.19, which permits municipalities to age-restrict 50 percent of affordable housing to be built in a municipality.

Citation: N.J.A.C. 5:94-1.4
Title 5. Community Affairs
Chapter 94. Substantive Rules of COAH for the Period Beginning December 20, 2004

Subchapter 1. General Provisions
Section 1. Introduction
R. 2009 D.303, Eff. September 11, 2009
41 N.J.R. 1561(a); 41 N.J.R. 3797(a)

“**Designated center**” means a center that has been officially recognized as such by the **State Planning Commission**.

See also:

“Endorsed plan” means a municipal, county or regional plan which has been approved by the **State Planning Commission** for initial or advanced **plan endorsement** as a result of finding it consistent with the **State Development and Redevelopment Plan**, pursuant to N.J.A.C. 5:85-7. This definition is in accord with and derived from the **State Development and Redevelopment Plan**.

See also:

“**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. This definition is in accord with and derived from the **State Development and Redevelopment Plan**.”

Explanation: Definitions in COAH’s substantive rules include the terms designated center and plan endorsement.

Citation: N.J.A.C. 5:94-2.2
Title 5. Community Affairs
Chapter 94. Substantive Rules of COAH for the Period Beginning December 20, 2004
Subchapter 2. Preparing a Housing Element and Determining Municipal Fair Share Obligation
Section 2. Preparing a Housing Element
R. 2009 D. 303, Eff. September 11, 2009
41 N.J.R. 1561(a); 41 N.J.R. 3797(a)

“Supporting information to be submitted with the Housing Element shall include: 4. Plan Projections for 2015 or growth projections for 2015 in an endorsed plan approved by the **State Planning Commission**, whichever is later, after December 20, 2004. If Plan Projections for 2015 are not available when a municipality petitions for substantive certification, a municipality may substitute the most recent municipal population, household, and employment growth projections published by the municipality's metropolitan planning organization as a minimum replacement for the **State Planning Commission** Plan Projections. Where no metropolitan planning organization household growth projections are available, population projections shall be converted to households using the most recently

published municipal household size data available from the Bureau of the Census...”

Explanation: COAH rules describe how municipalities are to support and justify the Housing Element and explain that, if SPC data is not available at the time of submission, alternative sources for projections of population and employment can be used instead.

Citation: N.J.A.C. 5:94-2.3
Title 5. Community Affairs
Chapter 94. Substantive Rules of COAH for the Period Beginning December 20, 2004
Subchapter 2. Preparing a Housing Element and Determining Municipal Fair Share Obligation
Section 3. Growth projection consistency with the State Development and Redevelopment Plan; Plan endorsement
R. 2009 D.303, Eff. September 11, 2009.
41 N.J.R. 1561(a); 41 N.J.R. 3797(a)

“Municipal growth projections that are consistent with the projections provided pursuant to N.J.A.C. 5:94-2.2(b)4 shall have a presumption of validity in a petition for substantive certification.

(b) If the growth projections in a municipality's Housing Element and Fair Share Plan used to determine the municipal growth share obligations pursuant to N.J.A.C. 5:94-2.4 are not consistent with the projections provided pursuant to N.J.A.C. 5:94-2.2(b)4, the Council may reject the municipality's petition for substantive certification unless the municipality demonstrates to the Council the validity of the analyses required in N.J.A.C. 5:94-2.2(b)5. The Council shall obtain a recommendation from the Executive Director of the *Office of Smart Growth* on the validity of the alternate projections.

(c) A municipality that has received a grant of substantive certification from the Council shall obtain initial *plan endorsement* from the *State Planning Commission* by the three-year anniversary review. A municipality that has not received initial *plan endorsement* may be subject to Council action, including revocation of the municipality's substantive certification.”

Explanation: COAH second round rules required plan endorsement as a condition of continued certification of their Fair Share Plans in order to assure consistency with the State Plan.

Note: In re Adoption of N.J.A.C. 5:94 & 5:95 by COAH, 390 N.J. Super. 1, 914 A.2d 348 (App.Div. 2007). In a multifaceted challenge to the validity of the substantive rules of the New Jersey Council on Affordable Housing for the third round, the growth share rules were

invalidated to the extent that the methodology relied on unissued data from the State Planning Commission, permitted voluntary compliance, and excluded job growth and housing growth resulting from rehabilitation and redevelopment.

Citation:

N.J.A.C. 5:94-4.4
Title 5. Community Affairs
Chapter 94. Substantive Rules of COAH for the Period Beginning December 20, 2004
Subchapter 4. Preparing a Fair Share Plan
Section 4. Municipal zoning options
R. 2009 D.303, Eff. September 11, 2009
41 N.J.R. 1561(a); 41 N.J.R. 3797(a)

“...If the zoning has not allowed an increase in density to accommodate affordable housing and requires a maximum of one for every eight market-rate residential units or one unit for every 25 jobs created in a non-residential development to be affordable to low and moderate income households, the zoning shall be exempt from the ***State Development and Redevelopment Plan*** provisions of N.J.A.C. 5:94-4.5(a)1 and 2...The Council encourages the design of inclusionary and mixed-use developments providing affordable housing to be in conformance with the design guidelines in the ***State Development and Redevelopment Plan***.”

Explanation:

COAH rules describe how municipalities should accommodate their affordable housing obligation. If they are unwilling to zone for enough density to accommodate the obligation in growth areas, COAH will compel the obligation be satisfied outside of areas designated for growth in the State Plan. The rules also encourage that inclusionary developments follow recommended design specifications described in the State Plan.

Citation:

N.J.A.C. 5:94-4.5
Title 5. Community Affairs
Chapter 94. Substantive Rules of COAH for the Period Beginning December 20, 2004
Subchapter 4. Preparing a Fair Share Plan
Section 5 New construction, site suitability criteria, and conformance with the State Development and Redevelopment Plan
R. 2009 D. 303, Eff. September 11, 2009
41 N.J.R. 1561(a); 41 N.J.R. 3797(a)

”Except as exempted in N.J.A.C. 5:94-4.4(a)1, sites zoned to produce affordable housing shall conform to the following criteria to determine site suitability:

1. Sites that are located in *Planning Areas 1* or 2 or located within a *designated center*, shall have a presumption of validity regarding consistency with the *State Development and Redevelopment Plan*. These sites are the preferred location for a municipality to address its growth share obligation.
2. Municipalities or developers proposing sites located in Planning Areas 3, 4, 4B, 5 or 5B that are not within a *designated center* shall have the burden of demonstrating to the Council that the site is consistent with sound planning principles and the goals, policies and objectives of the *State Development and Redevelopment Plan*. The Council shall obtain a recommendation from the Executive Director of the *Office of Smart Growth* on the consistency of the site with sound planning principles and the goals, policies and objectives of the *State Development and Redevelopment Plan*.”

Explanation: COAH rules describe how municipalities are to determine site suitability for accommodating affordable housing with locations in Planning Areas 1 and 2 being given the presumption of validity regarding State Plan consistency. Sites outside these Planning Areas are subject to more scrutiny with a demonstration of consistency with sound planning principles and the State Plan goals, policies and objectives. COAH is to get a recommendation from OSG for sites outside State Plan designated growth areas in making this determination.

Citation: N.J.A.C. 5:94-9.2
 Title 5. Community Affairs
 Chapter 94. Substantive Rules of COAH for the Period Beginning December 20, 2004
 Subchapter 9. Progress and Monitoring Reporting
 Section 2. Monitoring reports
 R. 2009 D. 303, Eff. September 11, 2009
 41 N.J.R. 1561(a), 41 N.J.R. 3797(a)

“...Each municipality having substantive certification shall submit a monitoring report as requested by the Council on an annual basis...The monitoring report shall include, at a minimum, the following information, based upon certificates of occupancy issued and the provisions of N.J.A.C. 5:94-2: Demonstration at the three-year anniversary review that initial *plan endorsement* was granted by the *State Planning Commission* pursuant to N.J.A.C. 5:94-2.3(c)...”

Explanation: These substantive rules required that a municipality be granted initial plan endorsement within three years of certification of its Fair Share Plan.

12.5.6. Substantive Rules of COAH for the Period Beginning June 2, 2008

Citation: N.J.A.C. 5:95-9.4
Title 5. Community Affairs
Chapter 95. Procedural Rules of COAH for the Period Beginning on December 20, 2004
Subchapter 9. Council Review of Certified Plans
Section 4. Enforcement
R. 2009, D. 304, Eff. Sept. 11, 2009
41 N.J.R. 1563(a); 41 N.J.R. 3797(b)

“...If upon review of the monitoring report at the third year anniversary the municipality has not received initial **plan endorsement** from the **State Planning Commission**,...the Council may revoke the municipality's substantive certification. However, if the municipality has diligently pursued **plan endorsement** but has not received it by the third year anniversary through no fault of its own, the Council shall not take action to revoke certification but shall continue to monitor the municipality's progress on an annual basis....”

Explanation: The second round procedural rules required that a municipality that has received substantive certification of its Fair Share Plan must diligently pursue plan endorsement or continued certification could be revoked.

Citation: N.J.A.C. 5:95-11.5
Title 5. Community Affairs
Chapter 95. Procedural Rules of COAH for the Period Beginning on December 20, 2004
Subchapter 11. Regional Contribution Agreements
Section 5. Review by Council
R. 2009, D. 304, Eff. Sept. 11, 2009
41 N.J.R. 1563(a); 41 N.J.R. 3797(b)

“...The Council shall approve an RCA upon finding that...The agreement provides a realistic opportunity for low and moderate-income housing within convenient access to employment opportunities...The agreement is consistent with sound comprehensive regional planning and the goals, policies and objectives of the **State Development and Redevelopment Plan**...”

Explanation: The second round procedural rules required that a municipality using RCA's to satisfy its affordable housing obligation would need to be consistent with the State Plan.

12.5.7. Procedural Rules of COAH for the Period Beginning December 20, 2004

Citation: N.J.A.C. 5:96-10.1
Title 5. Community Affairs
Chapter 96. Procedural Rules of COAH for the Period Beginning On
June 2, 2008
Subchapter 10. Plan Evaluation
Section 1. Plan evaluation report
R. 2008 D. 146, Eff. June 2, 2008
40 N.J.R. 515(a); 40 N.J.R. 3161(a)

“...The Council shall conduct biennial plan evaluations upon substantive certification of a municipality’s Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing...The Council’s Executive Director shall issue a report to the municipality and the service list based on a review that considers, at a minimum, the following information:...If applicable, the status of the municipality’s application for *plan endorsement* from the *State Planning Commission*...”

Explanation: The procedural requirements for the third round included COAH performing biennial evaluation of implementation of certified municipal Fair Share Plan. One of the reporting requirements is a statement of the status of a municipality’s application for plan endorsement.

12.5.8. Substantive Rules of COAH for the Period Beginning June 2, 2008

Citation: N.J.A.C. 5:97-1.4
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning
June 2, 2008
Subchapter 1. General Provisions
Section 4. Definitions
R. 2008 D.145, Eff. June 2, 2008
40 N.J.R. 237(a); 40 N.J.R. 2690(a)

““*Designated center*” means a center that has been officially

recognized as such by the *State Planning Commission*.

“*Office of Smart Growth (OSG)*” means the Office in the Department of Community Affairs that staffs the *State Planning Commission* and provides planning and technical assistance as requested.

“*Plan endorsement*,” “*plan endorsement process*” or “*endorsement*” means the process undertaken by a municipality, county or regional agency, counties and municipalities or any grouping thereof, to petition the *State Planning Commission* for a determination of consistency of the submitted planning documents with the *State Development and Redevelopment Plan*.

“*Planning area*” means an area defined by a set of common criteria that focus on the degree and type of development or natural resources. Planning areas serve as organizing mechanisms for growth and development planning throughout the State. This definition is in accord with and derived from the *State Development and Redevelopment Plan*.

“*State Development and Redevelopment Plan*” means the plan prepared and adopted by the *State Planning Commission* pursuant to the *State Planning Act*, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.).

“*Urban Center*” means a city of Statewide importance, designated as an Urban Center by the *State Planning Commission*. An Urban Center is a large settlement that has a high intensity of population and mixed land uses, including industrial, commercial, residential and cultural uses, the historical foci for growth in the major urban areas of New Jersey.”

Explanation: The definitions in the substantive rules define terms relating to the State Plan and plan endorsement.

Note: This second set of third round rules became effective on June 2, 2008, with amendments through October 20, 2008, and governs municipal affordable housing obligations for the period 1999-2018.

E.O. 114 (2008)

Citation: N.J.A.C. 5:97-3.13
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning June 2, 2008
Subchapter 3. Preparing a Fair Share Plan
Section 13. Site suitability criteria and consistency with the *State Development and Redevelopment Plan*
R. 2008 D. 145, Eff. June 2, 2008
40 N.J.R. 237(a); 40 N.J.R. 2690(a)

“Sites designated to produce affordable housing shall be available, approvable, developable and suitable, according to the following criteria: 1. The site has a clear title and is free of encumbrances which preclude development of affordable housing; 2. The site is adjacent to compatible land uses and has access to appropriate streets; 3. Adequate sewer and water capacity, as defined under N.J.A.C. 5:97-1.4, shall be available to the site or the site is subject to a durational adjustment pursuant to N.J.A.C. 5:97-5.4; and 4. The site can be developed consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21, where applicable. Deviations from those standards are to be done in accordance with N.J.A.C. 5:21-3.

(b) Sites designated to produce affordable housing shall be consistent with the *State Development and Redevelopment Plan* and shall be in compliance with the rules and regulations of all agencies with jurisdiction over the site, including, but not limited to:

1. Sites that are located in *Planning Areas 1* or 2 or located within a *designated center* or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation. 2. Municipalities or developers proposing sites located in Planning Areas 3, 4, 4B, 5 or 5B that are not within a *designated center* or an existing sewer service area shall demonstrate to the Council that the site is consistent with sound planning principles and the goals, policies and objectives of the *State Development and Redevelopment Plan*. The Council may seek a recommendation from the Executive Director of the *Office of Smart Growth* on the consistency of the site with sound planning principles and the goals, policies and objectives of the *State Development and Redevelopment Plan*.

(c) The Council may seek a recommendation from the appropriate regulating agency on the suitability of a proposed site. In taking such action, the Council may require the municipality to submit all necessary documentation to the agency so that a review and decision regarding the suitability of any site may be completed.”

Explanation:

These rules define criteria for determining eligibility of sites for inclusion in the Fair Share Plan for affordable housing. The criteria include whether the site has available sewage treatment and drinking water supply and if it can be developed consistent with RSIS standards. Sites proposed outside of State Plan designated areas are to be evaluated by COAH for consistency with the State Plan. COAH may consult with OSG in performing this evaluation.

Citation:

N.J.A.C. 5:97-3.16
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning
June 2, 2008
Subchapter 3. Preparing a Fair Share Plan
Section 16. Coordination with other State agencies
R. 2008 D. 145, Eff. June 2, 2008
40 N.J.R. 237(a); 40 N.J.R. 2690(a)

“Municipalities that have petitioned the Council for substantive certification are encouraged to seek *plan endorsement* from the *State Planning Commission* and shall include a status of the application with their petitions if participating in the *plan endorsement* process. (b) To determine whether a municipal Fair Share Plan creates a realistic opportunity for the provision of affordable housing, where applicable, the Council may consult with the *State Planning Commission*, the New Jersey Meadowlands Commission, the Highlands Water Protection and Planning Council, the Pinelands Commission or other relevant State agencies. (c) Municipalities are encouraged to work with regional planning commissions and authorities to address municipal affordable housing obligations on a regional level.”

Explanation:

These rules make participation in plan endorsement, consultation with SPC and work with regional planning commissions discretionary activities in implementation of COAH’s substantive requirements for certification of Fair Share Plans.

Citation:

N.J.A.C. 5:97-3.18
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning
June 2, 2008
Subchapter 3. Preparing a Fair Share Plan
Section 18. Smart growth bonus
R. 2008 D. 145, Eff. June 2, 2008
40 N.J.R. 237(a); 40 N.J.R. 2690(a)

“A municipality may receive 1.33 units of credit for each affordable housing unit addressing its growth share obligation that was or will be created and occupied in the municipality or received preliminary or final approval, after June 6, 1999 that is included in a Transit Oriented Development in a *Planning Area 1, 2* or a *designated center* when: 1. The preliminary and/or final approval provides for a minimum set-aside of 20 percent of the total number of units in the development; 2. The affordable units are provided on-site; 3. At least 50 percent of the affordable units are family units; and

4. The development meets the zoning criteria pursuant to N.J.A.C. 5:94-6.4.

(b) If the affordable units have not been constructed as of the date of petition, the municipality shall submit evidence of a firm commitment for the construction of the units in conformance with N.J.A.C. 5:94-3.6(a)3ii.”

Explanation: The Fair Share Plan must provide an opportunity for all of the affordable housing obligations assigned to a municipality by COAH. This section indicates that bonus points for developments that will be located in a growth area as designated in the State Plan provided certain conditions are met.

Citation: N.J.A.C. 5:97-5.2
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning June 2, 2008
Subchapter 5. Adjustments
Section 2. Vacant land adjustment procedures
R. 2008 D. 145, Eff. June 2, 2008
40 N.J.R. 237(a); 40 N.J.R. 2690(a)

“The standards and procedures in this section shall be used to determine the RDP for a municipality requesting a vacant land adjustment of its prior round obligation... The municipality shall be responsible for demonstrating that the municipal response to its housing obligation is limited by the lack of land capacity... an inventory of sites that are devoted to a specific use which involves relatively low-density development and could create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: a golf course not owned by its members; a farm in *Planning Areas 1* or 2; a driving range; nursery; and a nonconforming use...”

Explanation: This rule sets out a procedure to follow in order to obtain a vacant land adjustment. The municipality shall identify sites that are realistic for inclusionary development in order for the Council to calculate the municipality’s RDP. Among these sites are farms in planning areas 1 or 2. The vacant land adjustment, or unmet need, is the difference between the prior round affordable housing obligation and the RDP.

Citation: N.J.A.C. 5:97-5.6
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning

June 2, 2008

Subchapter 5. Adjustments

Section 6. Adjustment of household and employment growth projections

R. 2008 D. 145, Eff. June 2, 2008

40 N.J.R. 3374(a); 40 N.J.R. 5965(a)

“...A municipality may request an adjustment to its household and employment projections provided in chapter Appendix F utilized to project the municipal growth share obligation, based on an analysis of existing land capacity. In reviewing the request, the Council shall consider both residential and non-residential land capacity regardless of the adjustment sought... (d) The Council shall review the adjustment request pursuant to the procedures in N.J.A.C. 5:97-5.2(e) through (g). The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory, for development...The Council shall generally utilize the municipality’s zoning to determine whether to assign the residential or non-residential density to each site remaining in the inventory...The Council shall also rely on the appropriate regulating agency’s regulations regarding development capacity of the site, including the density. The Council shall assign the following densities to the remaining sites in the inventory: 1. Land in Urban Centers, as designated or identified by the *State Planning Commission*, shall have a minimum presumptive density of 22 units per acre for residential sites and 220 jobs per acre for non-residential sites; 2. Land in *Planning Area 1* shall have a minimum presumptive density of eight units per acre for residential sites and 80 jobs per acre for non-residential sites; 3. Land in Planning Area 2 and centers shall have a minimum presumptive density of six units per acre for residential sites and 60 jobs per acre for non-residential sites; 4. Land in existing or proposed sewer service areas outside of *Planning Areas 1* or 2 shall have a minimum presumptive density of four units per acre for residential sites and 40 jobs per acre for non-residential sites; and 5. Land outside of a sewer service area in Planning Areas 3, 4 and 5 shall have a minimum presumptive density for residential sites that is established in DEP’s Water Quality Management Planning rules (N.J.A.C. 7:15) 2.0 mg/L nitrate dilution standards...(f) These adjusted housing and employment growth projections shall be added back to the actual growth for the period January 1, 2004 to the date of petition. If the result exceeds the growth projections shown in Appendix F, no change will be made to the projections utilized for the purpose of projecting the growth share obligation pursuant to N.J.A.C. 5:97-2.4...”

Explanation:

This section of the rules establishes COAH’s procedures for determining whether to adjust the growth share projections assigned

to a municipality. Presumptive densities are assigned based on conditions such as Planning Area and sewer service availability.

Citation:

N.J.A.C. 5:97-6.4

Title 5. Community Affairs

Chapter 97. Substantive Rules of COAH for the Period Beginning June 2, 2008

Subchapter 6. Mechanisms for Addressing the Fair Share Obligation

Section 4. Zoning for inclusionary development

R. 2008 D. 145, Eff. June 2, 2008

40 N.J.R. 237(a); 40 N.J.R. 2690(a)

“(a) Affordable housing units proposed through inclusionary development shall be provided through zoning for development that includes a financial incentive to produce the affordable housing, including but not limited to increased densities and reduced costs to the developer...

(b) The following provisions presumptively apply to each site or zone proposed for inclusionary development:

1. All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13; 2. To ensure the efficient use of land through compact

forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning shall permit minimum presumptive densities and presumptive maximum affordable housing set-asides as follows: i. Inclusionary zoning in

Planning Area 1 shall permit residential development at a presumptive minimum gross density of eight units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development; ii. Inclusionary zoning in Planning Area 2 and **designated centers** shall permit residential development at a presumptive minimum gross density of six units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development; iii.

Inclusionary zoning in existing or proposed sewer service areas outside of **Planning Areas 1** or 2 shall permit residential development at a presumptive minimum gross density of four units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development;

iv. Inclusionary zoning outside of a sewer service area in Planning Areas 3, 4 and 5 shall permit a presumptive density increase of 40 percent over the existing zoning. The presumptive maximum affordable housing set-aside shall be 20 percent of the total number of units in the development; and v. Inclusionary zoning in Urban Centers, as designated or identified by the **State Planning Commission**, shall permit residential development at a presumptive

minimum gross density of 22 units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development.”

Explanation: This section of the rule sets out standards for zoning for inclusionary development and includes mandatory densities depending on growth area designations in the State Plan and sewer service availability.

Citation: N.J.A.C. 5:97-7.7
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning June 2, 2008
Subchapter 7. Regional Contribution Agreements
Section 7. Review and approval by county planning board(s)
R. 2008 D. 145, Eff. June 2, 2008
40 N.J.R. 237(a); 40 N.J.R. 2690(a)

“The receiving municipality's county planning board shall review and provide the Council with a recommendation regarding whether or not the RCA is in accordance with sound comprehensive regional planning and the goals and objectives of the *State Development and Redevelopment Plan* and provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities prior to the RCA receiving the Council's approval.

(b) A completed RCA Project Plan application, and the master plans and zoning ordinances of the sending and receiving municipalities, shall be forwarded to the county planning board of the county in which the receiving municipality is located for review and recommendation. The county planning board of the receiving municipality shall make a determination as to whether or not the RCA is in accordance with sound comprehensive regional planning and the goals and objectives of the *State Development and Redevelopment Plan* and provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities. If the RCA is between two municipalities in different counties, the county planning board of the receiving municipality may confer with or request information from the county planning board of the sending municipality.”

Explanation: The Fair Share Plan may account for a portion of the affordable housing obligations assigned to it by COAH. This section describes requirements for municipalities that enter into regional contribution agreements (RCA's) to accommodate up to 50% of its obligation. The county planning board for the municipality makes a recommendation on whether the RCA is in accord with the State

Plan.

Citation: N.J.A.C. 5:97-7.8
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning
June 2, 2008
Subchapter 7. Regional Contribution Agreements
Section 8. Review and approval by the council
R. 2008 D. 145, Eff. June 2, 2008
40 N.J.R. 237(a); 40 N.J.R. 2690(a)

“An RCA shall be approved upon a finding by the Council that:
1. The project provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities as determined by the county planning board...The project is consistent with sound comprehensive regional planning and the goals, policies and objectives of the *State Development and Redevelopment Plan* as determined by the county planning board...”

Explanation: The Fair Share Plan may account for a portion of the affordable housing obligations assigned to it by COAH. This section describes requirements for municipalities that enter into regional contribution agreements (RCA’s) to accommodate up to 50% of its obligation. The project being developed using the credits is to be consistent with the State Plan.

Citation: N.J.A.C. 5:97 Appendix A
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning
June 2, 2008
Appendix A. Growth Share Ratio Methodology
R. 2008 D. 145, Eff. June 2, 2008
40 N.J.R. 237(a); 40 N.J.R. 2690(a)

Numerous references are found for the various search terms in this report, primarily with regard to definitions.

Explanation: This Appendix to COAH’s rules is methodology COAH used to assign municipal obligations of prospective affordable housing needs.

Citation: N.J.A.C. 5:97 Appendix F
Title 5. Community Affairs
Chapter 97. Substantive Rules of COAH for the Period Beginning
June 2, 2008
Appendix F. Consultant’s Report
R. 2008 D. 145, Eff. June 2, 2008

40 N.J.R. 237(a); 40 N.J.R. 2690(a)

Numerous references are found for the various search terms in this report, as well as other references to the program. For example: “The most current version (Version 3 – June 2007) of the Draft State Plan Policy Map was provided by OSG and used to delineate State **Planning Areas** and the boundaries of the Meadowlands and Pinelands. The Highlands boundaries were downloaded from its web site. The three regional areas were extracted from the LU/LC base map and addressed separately as described in this report. A number of municipalities partly located in the Meadowlands and Pinelands were split into two parts, and vacant land was computed separately for each section based on rules appropriate to that area.”

Explanation: This Appendix to COAH’s rules is the report and methodology prepared by a consultant. It included population and employment projections used in calculating and apportioning regional affordable housing obligations to each municipality.

12.6. Strategic Housing Plan Act

Citation: N.J.S.A. 52:27D-329.10 et seq. at 13
Title 52. State Government
Chapter 27D. Department of Community Affairs
329.13. State Housing Commission
L. 1985, c. 222, s. 1, Eff. July 2, 1985

“The State Housing Commission is created and established in the Executive Branch of the State Government...The commission shall consist of 15 public members and shall also include...the Chairman of the **State Planning Commission**.”

Explanation: The Legislature found that the State has a lack of affordable housing and identified the need to develop a strategic housing plan to establish priorities to address the lack. The Act creates a Housing Commission, in but not of the DCA. This section establishes membership of the Commission which includes both public members and members from the Executive branch. One member of the commission is the Chairman of the State Planning Commission.

Citation: N.J.S.A. 52:27D-329.15
Title 52. State Government
Chapter 27D. Department of Community Affairs
329.13. Interdepartmental working group
L. 2008, c. 46, s. 26, Eff. July 17, 2008

“...An interdepartmental working group is established for the purpose of supporting the activities of the commission and its preparation of the draft plan...The membership of the working group shall consist of the commissioners or executive directors of the following departments or agencies of State government: the Department of Community Affairs, the Council on Affordable Housing, the New Jersey Housing and Mortgage Finance Agency, the Department of Human Services, the Department of Children and Families, the Department of Health and Senior Services, the Department of Education, the Department of Environmental Protection, the Department of Transportation, the *Office of Smart Growth*, the Department of the Treasury, the Highlands Council, the Pinelands Commission, and the New Jersey Meadowlands Commission...”

Explanation: This section of the Act creates an interdepartmental working group in support of preparing the Annual Strategic Housing Plan. One member of the working group is from the Office of Smart Growth.

12.7. An Act Establishing a Main Street New Jersey Program

Citation: N.J.S.A. 52:27D-452 et seq. at 456
Title 52. State Government
Chapter 52:27D. Department of Community Affairs
Subchapter 456. Main Street New Jersey Advisory Board
L. 2001, c. 238, s. 5, Eff. Aug. 31, 2001

“...The Main Street New Jersey Advisory Board shall consist of 23 members...The remaining seven advisory board members shall serve ex officio and shall be ...and a representative of the *Office of State Planning*, to be appointed by the Director of the *Office of State Planning*.”

Explanation: This Act establishes the “Main Street New Jersey” program in the Division of Housing and Community Resources in the DCA. The purpose of the program is to serve as a comprehensive revitalization program to promote the historic and economic redevelopment of traditional business districts in the State. Participation is through a competitive application process. The Act also establishes an advisory board to provide guidance and advocacy in formulating policy and assist with long-term planning and administration of the program.

12.8. Revenue Allocation District Financing Act

Citation: N.J.S.A. 52:27D-459 et seq. at 483
Title 52. State Government
Chapter 27D. Department of Community Affairs
483. Provisions for the guarantee of bonds
L. 2001, c. 310, s. 35, Eff. March 4, 2002

“Any financial instrument issued by a district agent that is secured in whole or in part by eligible revenues shall be subject to the review and approval of the board. That review and approval shall be made prior to approval of a resolution or agreement authorizing the financing. The board shall be entitled to receive from the applicant an amount sufficient to provide for all reasonable professional and other fees and expenses incurred by it for the review, analysis and determination with respect thereto. As part of its review, the board shall specifically solicit comments from the *Office of State Planning* in addition to comments from the public....”

Explanation: This Act provides municipalities with the authority to provide means for financing certain costs of redevelopment in areas where private capital investment is deferred because of the deteriorated condition of the land, buildings and infrastructure within those areas. Specifically, it authorizes revenue allocating financing and the deduction of payments in lieu of taxes toward retirement of debt incurred in redevelopment. The act establishes procedures for administering such programs including creating districts (RAD’s) and authorizing issuing bonds or notes. Section 483 concerns authorizing funding to guarantee bonds. The Local Finance Board reviews the guarantees and consults with OSP as part of its review.

Note: This Act was amended by the N.J. Economic Stimulus Act of 2009 (P.L. 2009, c. 90, s. 13) to render sections N.J.S.A. 52:27D-459 through 489 inoperative and without effect for applications submitted after the effective date (July 28, 2009). Those sections remain in effect for RADs for which financing has been approved prior to the effective date. Any RAD approved prior to the effective date but without financing approval fall under the provisions of N.J.S.A. 52:27D-489C *et al.*

12.9. New Jersey Economic Stimulus Act of 2009

12.9.1. Statute

Citation: N.J.S.A. 52:27D-489A at 489C
Title 52. State Government
Chapter 27D. Department of Community Affairs
489C. Definitions relative to economic stimulus
L. 2009, c. 90, sec. 3, Eff. July 28, 2009; amended 2010, c. 10, s. 4,
Eff. May 5, 2010; retroactive to July 28, 2009

“... "Qualifying economic redevelopment and growth grant incentive area" means **Planning Area 1** (Metropolitan), **Planning Area 2** (Suburban), or a center as designated by the **State Planning Commission**...”

Explanation: The Act recognizes that economic conditions in the State require actions, such as tax incremental financing, tax credits, development fee suspensions, dedicated economic development revenues with a more efficient redevelopment process, in order to stimulate the economy. Section 489c defines the area in which projects will be considered for inclusion in the program and includes Planning Area 1, Planning Area 2 or a center designated by the SPC.

Citation: N.J.S.A. 52:27D-489H
Title 52. State Government
Chapter 27D. Department of Community Affairs
489H. Incentive grant application form, procedure
L. 2009, c. 90, s. 8, Eff. Date: July 28, 2009; amended 2010, c. 10, s. 8, Eff. May 5, 2010; retroactive to July 28, 2009

“... The authority, State Treasurer, and Local Finance Board may act cooperatively to administer and review applications, and shall consult with the **Office of State Planning** on matters concerning State, regional, and local development and planning strategies...”

Explanation: This section of the Act deals with creating application forms for the EDA’s Economic Redevelopment and Growth Grant program. The EDA is directed to prepare regulations to establish standards for redevelopment projects seeking grants based on a series of considerations. OSP is to be consulted on matters concerning development and planning strategies.

Citation: N.J.S.A. 52:27D-489K
Title 52. State Government

Chapter 27D. Department of Community Affairs
Subchapter 489K. Agreement between developer and municipality
L. 2009, c. 90, s. 11, Eff. Date: July 28, 2009

“...Within a qualifying economic redevelopment and growth grant incentive area a municipality that has entered into a local redevelopment incentive grant agreement may pledge eligible revenues it is authorized to collect as follows... within **Planning Area 1** (Metropolitan) under the **State Development and Redevelopment Plan** adopted pursuant to the "**State Planning Act**,"...a municipality may impose the entire State sales tax on business activities within a redevelopment project located in an urban enterprise zone that would ordinarily be entitled to collect reduced rate revenues under section 21 of P.L.1983, c.303 (C.52:27H-80), and pledge the excess revenues to a local redevelopment incentive grant agreement...”

Explanation: This section of the Act deals with how a municipality that has entered into a local redevelopment incentive grant agreement may pledge eligible revenues it is authorized to collect. In a UEZ, a municipality may forego the reduced sales tax and use the difference in revenue for local projects.

12.9.2. Economic Redevelopment and Growth Program Rules

Citation: N.J.A.C. 19:31-4.2
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Proposed New Subchapter 4. Economic Redevelopment and Growth (ERG) Program
Section 2. Definitions
Proposed New Rule
43 N.J.R. 6(1) et seq.; Published June 6, 2011

“...”Qualifying economic redevelopment and growth grant incentive area” or “incentive area” means **Planning Area 1** (Metropolitan), Planning Area 2 (Suburban), or a center as designated by the **State Planning Commission**; a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L. 1979, c.111 (N.J.S.A. 13:18A-1 et seq.), a transit village; and federally owned land approved for closure under a federal Base Realignment Closing Commission action...”

Explanation: This section incorporates the provisions of the New Jersey Economic Stimulus Act at 489C (N.J.S.A. 13:18A-489C), which establishes the ERG Program and defines the area in which projects will be considered for inclusion in the program, which includes Planning Area 1, Planning Area 2 or a center designated by the SPC.

Citation: N.J.A.C. 19:31-4.3
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Proposed New Subchapter 4. Economic Redevelopment and Growth (ERG) Program
Section 3. Eligibility criteria
Proposed New Rule
43 N.J.R. 6(1) et seq.; Published June 6, 2011

“The Authority, in consultation with the Treasurer for a State grant, shall conduct a review to determine eligibility for any State or local incentive grant, wherein the following must apply: (a) the redevelopment project must be located in a qualifying economic redevelopment and growth grant incentive area provided however, that a State incentive grant shall not be given for a project in an incentive area that qualifies as such solely by virtue of being a transit village;...”

Explanation: This section requires that a redevelopment project, to be eligible under the ERG Program, be located in a qualifying economic redevelopment and growth grant incentive area, as defined above, which includes Planning Areas 1 and 2 and SPC designated centers, among others.

12.10. An Act Regarding Expedited Permits

Citation: N.J.S.A. 52:14F-14
Title 52. State Government
Chapter 14F. Office of Administrative Law
14. Definitions relative to expedited appeals in OAL
L. 2004, c. 89, s. 11, Eff. July 9, 2004

“As used in sections 12 through 18 of P.L. 2004, c. 89 (C.52:14F-15 through C. 52:14F-21)... "Smart growth area" means an area designated pursuant to P.L. 1985, c. 398 (C. 52:18A-196 et seq.) as **Planning Area 1** (Metropolitan), **Planning Area 2** (Suburban), a **designated center**, or a designated growth center in an endorsed plan; ...”

Explanation: This Act establishes a process to handle expedited appeals in the OAL. Section 14 deals with definitions and refers to the definition of “smart growth area” which includes the areas designated in the State Plan for growth.

12.11. Fort Monmouth Economic Revitalization Authority Act

Citation: N.J.S.A. 52:27I-14
Title 52. State Government
Chapter 27I. Fort Monmouth Economic Revitalization Authority
14. Preparation of comprehensive conversion and revitalization plan for Fort Monmouth
L. 2006, c. 16, s. 14

“...The plan shall generally comprise a report or statement and land use and development proposals, including plans for the development, redevelopment or rehabilitation of the project area with maps, diagrams and text, presenting:...(4) Any significant relationship of the plan to (a) the master plans of constituent municipalities, (b) the master plan of the county in which the municipalities are located, and (c) the *State Development and Redevelopment Plan* adopted pursuant to the "*State Planning Act*,"..."

Explanation: The Act concerns closure and revitalization of Fort Monmouth. The Legislature found that this is a matter of great concern for the host communities of Eatontown, Oceanport, and Tinton Falls; for Monmouth County; and for the entire State of New Jersey. In addition, there are federal requirements for an entity to prepare a comprehensive conversion and revitalization plan for this facility through the Base Realignment and Closure Commission. The Act establishes the Fort Monmouth Economic Revitalization Authority in the Department of Treasury for this purpose and defines its composition and authority. Section 14 deals with preparing the plan and includes a requirement that the relationship of the plan to the State Plan is to be included in it.

12.12. Municipal Rehabilitation and Economic Recovery Act

Citation: N.J.S.A. 52:27BBB-1 et seq. at 39
Title 52. State Government
Article 3. Redevelopment Management
Chapter 27BBB. Municipal Rehabilitation and Economic Recovery
L. 2002, c. 43, s. 39, Eff. July 22, 2002

“There is established for each qualified municipality a regional impact council to serve for that period during which the municipality is under rehabilitation and economic recovery. The council shall consist of...the director of the *Office of State Planning* or his or her designee...”

Explanation:

The Act is intended to address the continuing state of fiscal distress in certain municipalities, which endures despite the imposition of a series of measures authorized pursuant to law. It recognizes that the State should, in certain circumstances, take exceptional measures, on an interim basis, to rectify certain governance issues faced by such municipalities and to strategically invest those sums of money necessary in order to assure the long-term financial viability of these municipalities. The Act creates a subsidiary corporation of the EDA, the State Economic Recovery Board. The Board operates during the time the municipality is under rehabilitation and economic recovery, or until its funds have been disbursed, whichever occurs first. It authorizes preparation of a strategic revitalization plan. This section also pertains to creation of a Regional Impact Council in each qualified municipality. A member of each of these Councils is from the OSP.

13. TAXATION

13.1. Environmental Zone Opportunity Act

Citation: N.J.S.A. 54:4-3.150 et seq. at 151
Title 54. Taxation
Subtitle 2. Taxation of Real and Personal Property in General
Chapter 4. Assessment and collection of taxes
Subchapter 3. Findings, declarations relative to contaminated real property
L. 1995, c. 413, s. 2

“The Legislature finds that there are numerous properties that are underutilized or that have been abandoned and that are not being utilized for any commercial use because of contamination that exists at those properties; that abandoned contaminated properties harm society by causing a burden on municipal services while failing to contribute to the funding of those services; that a disproportionate percentage of these properties are located in older urban municipalities given the fact that these municipalities were once the center for industrial production; that the revitalization of these properties will not only bring tax ratables to the municipality and other local governments, but will result in job creation and foster urban redevelopment; that one of the central tenets of the *State Development and Redevelopment Plan* is to redevelop urban areas with existing utilities and infrastructure and that the use of these now abandoned or underutilized sites for commercial purposes will make a significant contribution toward implementing the plan...”

Explanation: This Act concerns measures to address underutilized or abandoned property by allowing for a municipality to create environmental opportunity zones and allow for exemptions of real property taxes in these zones. This section identifies legislative findings regarding contaminated real property and states that development of underutilized properties will revitalize the areas in which they are located, consistent with the State Plan central tenet to redevelop urban areas with existing utilities and infrastructure.

13.2. Corporate Business Tax Act

Citation: N.J.S.A. 54:10A-1 et seq. at 5.35
Title 54. Taxation

Chapter 10A. Corporate Business Tax Act
Subchapter 5.
Section 35. Additional requirements for eligibility
L. 2003, c. 296, s. 3; Eff. January 14, 2004

In addition to the requirements... for a tax credit for the costs of remediation..., the Director of the Division of Taxation in the Department of the Treasury shall certify that the remediation of the contaminated site has also satisfied the following: a. the remediated site is located within an area designated as a ***Planning Area 1*** (Metropolitan) or Planning Area 2 (Suburban) as designated pursuant to the "***State Planning Act***," ...

Explanation: The Act establishes a program providing for a corporate business tax credit to cover certain remediation costs. This section deals with requirements of eligibility for the program and includes that the remediated site must be in a growth area as designated in the State Plan to qualify.

14. HOUSING

14.1. New Jersey Housing and Mortgage Finance Agency Law of 1983

14.1.1. Statute

Citation: N.J.S.A. 55:14K-1
Title 55. Tenement Houses and Public Housing
Chapter 14K. New Jersey Housing and Mortgage Finance Agency
L. 1983, c. 530, 1, Eff. Jan. 17, 1984

“...Changing economic conditions and financial markets have reduced the availability in the private sector of feasible construction and permanent financing for (1) the construction of new housing, (2) the conversion of non-residential structures to housing, (3) the rehabilitation and improvement of existing housing and...b. The foregoing conditions adversely affect the economy of this State and reduce the number of opportunities for adequate and affordable housing in the State that are available to New Jersey residents;...The Legislature therefore declares that it is in the best interests of the residents of New Jersey to create a strong, unified advocate for housing production, finance and improvement which will combine available talent, resources and experience to:...Stimulate the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of opportunities for adequate and affordable housing in the State for New Jersey residents, including particularly New Jersey residents of low and moderate income;...Enhance the productive capacity of the private sector in meeting the housing needs of the residents of the State;...Assist in the revitalization of the State's urban areas...”

Explanation: The Legislature found that there were not sufficient opportunities for development of new housing or conversion of non-residential structures to housing and that this reduced the opportunities for affordable housing in the State. It combined two agencies that had helped finance affordable housing development into HMFA. The agency was established to advocate for and finance affordable housing. One goal of the agency is to assist in revitalizing the State's urban areas which is a goal of the State Plan.

14.1.2. Low Income Housing Tax Credit Qualified Allocation Plan Rules

Citation: N.J.A.C. 5:80-33.2
Title 5. Community Affairs
Chapter 80. NJ Housing and Mortgage Financing Agency
Subchapter 33. Low Income Housing Tax Credit Qualified Allocation Plan
Section 2. Definitions
R. 2010 D. 292, Eff. November 16, 2010
42 N.J.R. 1282(a); 42 N.J.R. 3055(a)

““Smart growth areas” means areas that promote growth in compact forms and protect the character of existing stable communities. An area shall be considered to be a smart growth area if it is within ***Planning Area 1***, Planning Area 2 or within a ***Designated Center*** on the State Plan Policy Map.

Planning Areas are large masses of land that share a common set of conditions, such as population density, infrastructure systems, level of development or natural systems. Centers are compact forms of development that, compared to sprawl development, consume less land, deplete fewer natural resources and are more efficient in the delivery of public services. For more information about the ***State Development and Redevelopment Plan*** (State Plan), contact the New Jersey ***Office of Smart Growth***. The State Plan is not itself a regulation but a statement of State policy that has been adopted by the ***State Planning Commission*** pursuant to a statute to guide State, regional and local agencies in the exercise of their statutory authority. For more information on whether a project is located within a smart growth area, visit the smart growth locator website at www.njlocator.gov or contact the NJHMFA Director of Policy and Planning at (609) 278-7400.”

Explanation: These rules involve administration of HMFA’s low income tax credit program. The definitions section defines “smart growth areas” includes Planning Areas 1, 2 and designated centers on the State Plan Policy Map. The rules use the location of projects in growth areas as a criterion for qualifying for certain HMFA programs. Inquiries as to project location are referred to the NJ Locator.

Citation: N.J.A.C. 5:80-33.15
Title 5. Community Affairs
Chapter 80. New Jersey Housing and Mortgage Finance Agency
Subchapter 33. Low Income Housing Tax Credit Qualified Allocation Plan
R. 2010 D. 292, Eff. November 16, 2010

42 N.J.R. 1282(a), 42 N.J.R. 3055(a)

“...The point system for the Family Cycle shall be as follows...Projects which are developed on a Brownfields site shall receive two points. In order to qualify for the Brownfields points, the application must include the site's Brownfields Site Marketing Inventory (BSMI) Project Tracking Number ("OSP BF#") that has been verified by the municipality. If the site does not have a tracking number that has been verified by the municipality, a copy of the approved New Jersey Department of Environmental Protection (DEP) Remedial Action Work Plan or a No Further Action letter issued by DEP for an unrestricted use shall be submitted. For a list of Brownfields sites and the corresponding tracking numbers, please call the *Office of Smart Growth*...”

Explanation: This section of the rules indicates that to qualify for the tax credit program based on a project on a brownfield site, the project must have been issued either a No Further Action letter from DEP for an unrestricted use. The Office of Smart Growth is to be consulted for a list of and tracking numbers for brownfields sites.

14.2. New Jersey Urban Redevelopment Act

Citation: N.J.S.A. 55:19-20 et seq. at 21
Title 55. Tenement Houses and Public Housing
Chapter 19. NJ Urban Development Corporation
Subchapter 21. Findings, determinations relative to urban redevelopment
L. 1996, c. 62, s. 49

“The Legislature finds and determines that: a. As one of the nation's most densely populated States and one of the earliest settled, New Jersey is beset by a host of urban problems attendant upon economic obsolescence, an aging infrastructure, long-term underinvestment and de-industrialization; b. Although the *State Development and Redevelopment Plan* has fostered a more coordinated and integrated State planning process and has placed renewed emphasis on urban revitalization goals, the realization of those revitalization goals still presents a critical challenge to the private sector and the myriad of governmental entities whose policies touch urban areas...”

Explanation: This Act recognizes that, creation of the State Plan alone has not resulted in sufficient coordinating to address urban problems. The Legislature found that there is a vast and complex network of State agencies and policies in the State which should cooperate in the

identification and resolution of urban problems which too often work at cross-purposes. The legislature concluded that it is vital that a new entity be created to bring together those agencies whose policies are most strongly felt in urban areas in order to promote their economic and social viability in a coordinated fashion. The Act reconstitutes the New Jersey Urban Development Corporation established pursuant to P.L.1985, c.227 (C.55:19-1 et seq.) as the New Jersey Redevelopment Authority in the Department of Commerce and Economic Development; but the authority shall be independent of any supervision or control by the department or by any other board or officer thereof.

Citation: N.J.S.A. 55:19-60
Title 55. Tenement Houses and Public Housing
Chapter 19. New Jersey Urban Development Council
Subchapter 60. Urban Coordinating Council
L. 1996, c. 62, s. 45

“There is established in, but not of, the Department of Community Affairs an Urban Coordinating Council. b. The Urban Coordinating Council shall be comprised of the...and the executive directors of...the *State Planning Commission*... Members of the council may be represented on the council by their designees.”

Explanation: The Act established the Urban Coordinating Council, in but not of the DCA, to coordinate state planning and redevelopment policy and provide assistance to projects and programs outlined in neighborhood empowerment plans developed pursuant to section 49 of P.L.1996, c.62 (C.55:19-64), and other projects. In addition, the Council duties include overseeing the Office of Neighborhood Empowerment created pursuant to section 48 of P.L.1996, c.62 (C.55:19-63). The Council is chaired by the Governor. Members include the heads of the state executive branch department, SPC and others.

Note: The Office of Neighborhood Empowerment (ONE) was transferred from being in but not of DCA, subject to supervision by the Urban Coordinating Council, to the NJRA in Reorganization Plan No. 002-1998. Funding for the UCC was later eliminated with the functions of the UCC being essentially continued by the members of the board of NJRA. In addition, funding for ONE was also eliminated and the functions of this entity are no longer being performed.

Citation: N.J.S.A. 55:19-64
Title 55. Tenement Houses and Public Housing
Chapter 19. New Jersey Urban Development Corporation
Subchapter 64. Development of neighborhood empowerment plan

L. 1996, c. 62, s. 49

“A neighborhood empowerment plan shall incorporate and address the needs of the neighborhood as identified by the community. It shall be comprehensive and shall take into consideration and show the relationship to the municipal master plan, other locally adopted plans (including, but not limited to urban enterprise zone plans, redevelopment plans and neighborhood social service plans), and the *State Development and Redevelopment Plan*, and shall outline how residents, municipal government, the private sector and neighborhood organizations will cooperate with the State and with each other during implementation...”

Explanation:

This section of the Act requires development of a neighborhood empowerment plan be done by a community in order to qualify to receive services of the Office of Neighborhood Empowerment. The plan is to be submitted to an interagency team that assures it is comprehensive and takes into account the relationship to, among others, the State Plan. As above, this program is no longer active.

15. WATER AND WATER SUPPLY

15.1. Water Pollution Control Act

15.1.1. Statute

Citation: N.J.S.A. 58:10A-1 et seq. at 2
Title 58. Water and Water Supply
Chapter 10A. Control of Water Pollution
L. 1977, c. 74, s. 1

“...The Legislature finds and declares that pollution of the ground and surface waters of this State continues to endanger public health; to threaten fish and aquatic life, scenic and ecological values; and to limit the domestic, municipal, recreational, industrial, agricultural and other uses of water, even though a significant pollution abatement effort has been made in recent years... the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500; 33 U.S.C. 1251 et seq.) establishes a permit system to regulate discharges of pollutants and provides that permits for this purpose will be issued by the Federal Government or by states with adequate authority and programs to implement the regulatory provisions of that act. It is in the interest of the people of this State to minimize direct regulation by the Federal Government of wastewater dischargers by enacting legislation which will continue and extend the powers and responsibilities of the Department of Environmental Protection for administering the State's water pollution control program, so that the State may be enabled to implement the permit system required by the Federal Act...”

Explanation: This Act concerns prevention of water pollution and authorizes DEP to establish a wastewater discharge permitting and regulation program in order to take over that authority of the Federal government pursuant to the Federal Water Pollution and Control Act.

15.1.2. Financial Assistance Programs for Infrastructure Rules

Citation: N.J.A.C. 7:22-3.36
Title 7. Environmental Protection
Chapter 22. Financial Assistance Programs for Environmental Infrastructure Facilities
Subchapter 3. Fund Procedures and Requirements
Section 36. Reserve capacity

R. 2006 D. 22, Eff. December 8, 2005
37 N.J.R. 2645(a), 38 N.J.R. 139(a)

“For Fund loan awards in State Fiscal Year 2004 and beyond, the incremental costs associated with reserve capacity, as described in (c) above, shall be an allowable cost under a Fund loan agreement for that portion of a project that serves a green light area on the Blueprint for Intelligent Growth (BIG) Map promulgated in rule by the Department. Until the Department promulgates the BIG Map in rule, the incremental costs associated with reserve capacity shall be an allowable cost under the Fund loan agreement for that portion of a project that serves an Urban Center or Urban Complex designated by the *State Planning Commission* in accordance with the New Jersey *State Planning Act*, N.J.S.A. 52:18A-196 et seq. and the *State Development and Redevelopment Plan* (adopted March 1, 2001).”

Explanation: The DEP program for providing financial assistance in funding infrastructure incremental costs associated with reserve capacity. This is an allowable cost under a Fund loan agreement for that portion of a project that serves an urban center or complex designated in the State Plan. DEP intends to adopt a BIG map as an alternative to using the State Plan for the purposes of identifying appropriate projects to receive funding.

Citation: N.J.A.C. 7:22-10.9
Title 7. Environmental Protection
Chapter 22. Financial Assistance Programs for Environmental Infrastructure Facilities
Subchapter 10. Environmental Assessment Requirements for State Assisted Environmental Infrastructure Facilities
Section 9. Environmental coordination
R. 2006 D. 22, Eff. December 8, 2005
37 N.J.R. 2645(a), 38 N.J.R. 139(a)

“...The project sponsor shall consult, coordinate with, or apply to those agencies responsible for issuing permits or which have planning and/or other jurisdiction regarding environmental concerns with respect to the proposed project and its impacts. Those agencies include, but are not limited to, the agencies responsible for administering the following... *State Development and Redevelopment Plan*, adopted pursuant to the New Jersey *State Planning Act*, N.J.S.A. 52:18A-196 et seq...”

Explanation: A program relating to assessment requirements for funding infrastructure projects requires coordination with a variety of agencies, including the agency responsible for the State Plan.

15.2. Underground Storage Tank Finance Act

15.2.1. Statute

Citation: N.J.S.A. 58:10A-35 et seq. at 37.5
Title 58. Water and Water Supply
Chapter 10A. Control of Water Pollution
Section 37.5. Awarding of financial assistance
L. 1997, c. 235, s. 5, Eff. August. 30, 1997

“The authority may award financial assistance from the fund to an eligible owner or operator in the form of a loan or a conditional hardship grant as provided in this section. An award of financial assistance, either as a loan or a grant...Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, an eligible owner or operator of a facility located within an area designated as a **Planning Area 1** (Metropolitan), **Planning Area 2** (Suburban), a **designated center** as designated pursuant to the "**State Planning Act,**" sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), or the Highlands Region...may receive a loan...for each facility so located...”

Explanation: This Act concerns upgrade, remediation and closure of underground storage tanks. This section pertains to establishing an underground tank closure fund administered by EDA. It authorizes EDA to issue grants or loans for construction or remediation of underground storage tank facilities. Limits of the loan amount are defined for owners or operators of a facility in growth areas designated pursuant to the State Planning Act.

15.2.2. Underground Storage Tank Finance Rules

Citation: N.J.A.C. 19:31-11.4
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 11. Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund
Section 4. Amount of Financial Assistance
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“...In the case of an eligible owner or operator of a facility located within an area designated as a **Planning Area 1** (Metropolitan), **Planning Area 2** (Suburban), a **designated center** as designated

pursuant to the "*State Planning Act*,"...or the Highlands Region..., the eligible owner or operator may receive a loan in an amount not to exceed \$ 3,000,000..."

Explanation: This subchapter defines the amount of assistance available from EDA for petroleum underground storage tank remediation. Enhanced benefits are available for facilities located in areas designated for growth in the State Plan.

15.3. Brownfield and Contaminated Site Remediation Act

15.3.1 Statute

Citation: 58:10B-1 et seq. at 7
Title 58. Water and Water Supply
Chapter 10B. Hazardous Discharge Site Remediation
Section 7. Awarding of financial assistance, grants, priorities
L. 1993, c. 139, s. 29

"...The authority shall award financial assistance and grants in the following order of priority: (1) Sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area shall be given first priority; and (2) Sites in areas designated as *Planning Area 1* (Metropolitan), *Planning Area 2* (Suburban), *designated centers*, or areas receiving *plan endorsement* as designated pursuant to the "*State Planning Act*," ..., sites that the Brownfields Redevelopment Task Force...determines are of immediate economic development potential, and sites in brownfield development areas, shall be given second priority."

Explanation: This section authorizes EDA to provide financial assistance from its remediation fund for sites. One criterion for being given priority for funding is whether the site is in a growth area designated in the State Plan.

Citation: N.J.S.A. 58:10B-23
Title 58. Water and Water Supply
Chapter 10B. Hazardous Discharge Site Remediation
Subchapter 23. Brownfield's Redevelopment Task Force; duties
L. 1997, c. 278, s. 5

“There is created the "Brownfields Redevelopment Task Force." The task force shall consist of seven representatives from State agencies and six public members. The State agency representatives shall be from each of the following State agencies: the *Office of State Planning* in the Department of Community Affairs...The *Office of State Planning* shall provide staff to implement the functions and duties of the task force. The public members of the task force shall serve without compensation but may be reimbursed for actual expenses in the performance of their duties. The Governor shall select the chairperson of the task force.”

Explanation: This legislation establishes the Brownfields Redevelopment Task Force, including its composition and duties. One member of the Task Force is from OSP. In addition, the legislation calls for OSP to staff the task force.

Citation: N.J.S.A. 58:10B-23.2
Title 58. Water and Water Supply
Chapter 10B. Hazardous Discharge Site Remediation
Subchapter 23. Brownfield's Redevelopment Task Force; duties
Section 2. Preparation of inventory of brownfield sites; definitions
L. 2005, c. 365, s. 2, Eff. January 12, 2006

“In accordance with section 5 of P.L.1997, c.278 (C.58:10B-23), the Brownfields Redevelopment Task Force shall continue to prepare an inventory of brownfield sites in the State, and shall expedite its efforts to compile a State inventory of brownfield sites for listing on the New Jersey Brownfields Site Mart...and...the inventory of brownfield sites shall include a list of known brownfield sites in the State, and at least the following information for each site...the planning area designation and any center designation as shown on the State Plan Policy Map prepared by the *State Planning Commission* pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.).”

Explanation: This section of the Act specifies what information the Task Force should include in the Brownfield sites inventory.

Citation: N.J.S.A. 58:10B-27.2
Title 58. Water and Water Supply

Chapter 10B. Hazardous Discharge Site Remediation
Subchapter 27.2. Entry of State into redevelopment agreement,
certain circumstances

L. 2005, c. 360, s. 1, Eff. January 12, 2006

“...the State may enter into a redevelopment agreement... in which the State may agree to reimburse a developer for 75% of remediation costs incurred subsequent to entering into the redevelopment agreement, provided that the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission, in consultation with the State Treasurer, finds that...the subject real property is situated within a **Planning Area 1** as designated in the **State Development and Redevelopment Plan**; and...a phase of the redevelopment project has not been commenced.”

Explanation:

This section of the Act deals with conditions under which the State may enter into redevelopment agreements. These conditions include that the remediation that has not yet been performed is necessary to ensure that the public health and safety and the environment are protected and explains the procedure when the State enters into a redevelopment agreement where another redevelopment plan was already in place.

15.3.2. Hazardous Discharge Site Remediation Fund Rules

Citation:

N.J.A.C. 19:31-8.7
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Subchapter 8. Hazardous Discharge Site Remediation Fund
Section 7. Priority system for financial assistance and grants
R. 2010 D. 285, Eff. November 9, 2010
42 N.J.R. 2019(a), 42 N.J.R. 2969(a)

“An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority... and other criteria as established by this rule in the following order of priority: 1. Sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; and 2. Sites in areas designated as **Planning Area 1**, **Planning Area 2**, **designated centers**, or areas receiving **plan endorsement** as designated pursuant to the "**State Planning Act**," ..., sites that the Brownfields Redevelopment Task Force...determines are of immediate economic

development potential, and sites in brownfield development areas.”

Explanation: In administering its hazardous site remediation fund program, one criteria used by the EDA to give priority to eligible projects is whether they are located in growth areas as designated in the State Plan.

Citation: N.J.A.C. 19:31-18.7
Title 19. Economic Development Authority
Chapter 31. Authority Assistance Programs
Proposed New Subchapter 18. Brownfields Reimbursement Program
Section 7. Approval
Proposed New Rule
Pre-publication draft rule language

“...The degree to which the redevelopment project will advance State, regional and local development planning strategies, particularly in *Planning Areas 1* and 2 of the New Jersey *State Development and Redevelopment Plan*...The degree to which the redevelopment project enhances and promotes job creation and economic development, particularly in the urban centers designated in the New Jersey *State Development and Redevelopment Plan*...”

Explanation: In administering the Brownfields Reimbursement Program, pursuant to N.J.S.A. 58:10B-27.2, and particularly the conditions under which the State may enter into redevelopment agreements, this section defines the criteria under which EDA and Treasury determine the percentage of taxes to be reimbursed. One of the criteria is the degree to which the project will advance State planning strategies, particularly in State Plan designated growth area.

15.4. Water Quality Planning Act

15.4.1. Statute

Citation: N.J.S.A. 58:11A-1 et seq.
Chapter 58. Waters and Water Supply
Subchapter 11A. Water Quality Planning
L. 1977, c. 75, s. 1, Eff. April 25, 1977

“...The Legislature finds that the people of the State have a paramount interest in the restoration, maintenance and preservation of the quality of the waters of the State for the protection and preservation of public health and welfare, food supplies, public water supplies, propagation of fish and wildlife, agricultural and industrial uses, aesthetic satisfaction,

recreation, and other beneficial uses...The Legislature declares that the objective of this act is, wherever attainable, to restore and maintain the chemical, physical and biological integrity of the waters of the State, including groundwaters, and the public trust therein; and that areawide waste treatment management planning processes should be developed and implemented in order to achieve this objective and to assure adequate control of sources of water pollutants in the State. The Legislature further declares that wherever practicable and feasible waste treatment management planning areas shall be coterminous with county boundaries...”

Explanation: The Act identifies the need to protect drinking water in the State and directs the DEP to establish a continuing planning process which will encourage, direct, supervise and aid area-wide planning and which will also incorporate water quality management plans into a comprehensive and cohesive Statewide program. The DEP is directed to coordinate and integrate water quality management plans with related Federal, State, regional and local comprehensive land use.

15.4.2. Water Quality Planning Rules

Citation: N.J.A.C. 7:15-5.24
Title 7. Environmental Protection
Chapter 15. Water Quality Management Planning
Subchapter 5. Wastewater Management Planning Requirements
Section 24. Delineation of sewer service areas
R. 2008 D. 163, Eff. May 21, 2008
39 N.J.R. 1870(a); 39 N.J.R. 2583(b); 40 N.J.R. 4000(a)

“Sewer service may only be provided to areas that are not identified as environmentally sensitive areas...Sewer service areas may include environmentally sensitive areas listed at (b) above provided:... it is designed to accommodate center based development and is an element of an endorsed plan approved by the *State Planning Commission* where: 1. The Department determines that the environmentally sensitive areas included in the sewer service area are not critical to a population of endangered or threatened species, the loss of which would decrease the likelihood of the survival or recovery of the species in the State;2. The Department has determined that the endorsed plan adequately addresses the protection of environmentally sensitive areas located outside of the designated sewer service area; and 3. The wastewater management planning agency has identified an adequate wastewater management alternative in accordance with N.J.A.C. 7:15-5.25(a) through (c).”

Explanation: The DEP rules regarding wastewater management planning prohibit sewer service delineations in environmentally sensitive areas. An exception is carved out if the area is designed to accommodate center based planning and is part of an SPC endorsed plan if certain conditions are met.

Note: E.O. 215 (1989)

16. EXECUTIVE ORDERS

<u>Year</u>	<u>No.</u>	<u>Topic</u>
1986	120	Establishes Agriculture Financing Task Force
1987	167	Establishes Urban Affairs Cabinet Council
1987	175	Establishes a Moratorium on Development in Wetlands
1988	201	Creates Urban Enterprise Zones
1989	215	Directs State Agencies to Prepare Environmental Assessment Statements
1989	219	Directs State Entities to Reduce CFC Emissions
1990	45	Transportation Planning
1991	32	Establishes Hudson River Waterfront Development Committee
1993	104	Establishes Aquaculture Development Task Force
1994	1	Establishes an Economic Development Master Plan Commission
1994	38	Establishes Prosperity NJ
1994	114	Directs Agencies to Incorporate Goals of State Plan in Programs
1997	67	Designates Monmouth County Board of Freeholders as an Area-wide Water Quality Management Planning Agency
1997	68	Creates Office of Sustainability in Commerce Dept.
1999	93	Creates Advisory Committee on Preservation of Ellis Island
1999	96	Regarding Policies Outlined in NJ Future “Living with the Future in Mind” Publication
2000	109	Wastewater Quality Management Rules
2002	4	Creates a Smart Growth Policy Council
2002	24	Establishes the School Construction Program and a Subsidiary Corporation within EDA Responsible for the School Facilities Projects
2002	38	Directs State Agencies to Target State Resources to Ensure Smart Growth
2003	56	Establishes the Commission on Jobs, Growth and Economic Development
2005	45	Partially Revokes Smart Growth Ombudsman Act Regarding Expedited Permits
2006	30	NJ Economic Growth Council
2006	37	Policy Coordination with State Authorities
2007	50	Economic Growth Reorganization
2008	114	Highlands Region and COAH Coordination
2009	147	Office of Economic Growth and EDA Collaboration
2009	150	Urban Enterprise Zones
2010	1	Suspends Rulemaking for Review
2010	2	Directs Agency Decisions to be Decided at Time of

<u>Year</u>	<u>No.</u>	<u>Topic</u>
		Application
2010	3	Establishes Red Tape Review Group
2010	4	Establishes Common Sense Principles
2010	12	Establishes Housing Opportunity Task Force
2010	41	Establishes Red Tape Review Commission
2011	78	Establishes State Strategic Plan Steering Committee

17. ACRONYM INDEX

<u>Acronym</u>	<u>Subject</u>
APA	Administrative Procedures Act
AUEC	Aid for Urban Environmental Concerns
BEIP	Business Employment Incentive Program
BIG	Blueprint for Intelligent Growth
BPU	Board of Public Utilities
BRRAG	Business Retention and Relocation Assistance Grant
BSMI	Brownfields Site Marketing Inventory
CADB	County Agriculture Development Board
CAFRA	Coastal Area Facilities Review Act
CBT	Corporate Business Tax
COAH	Council on Affordable Housing
CZM	Coastal Zone Management
DCA	Department of Community Affairs
DOA	Department of Agriculture
DOE	Department of Education
DOT	Department of Transportation
EDA	Economic Development Authority
ERG	Economic Redevelopment and Growth
ESP	Environmental Services Program
HMFA	Housing and Mortgage Finance Agency
LANDSAT	Land Satellite Imagery
MLUL	Municipal Land Use Law
NJHMFA	New Jersey Housing and Mortgage Finance Agency
NJRA	New Jersey Redevelopment Authority
OAL	Office of Administrative Law
ONE	Office of Neighborhood Empowerment
OSG	Office of Smart Growth
OSP	Office of State Planning
RCA	Regional Contribution Agreement
RDP	Realistic Development Potential
REMA	Real Estate Market Analysis
RPMM	Resource Planning and Management Map
SDRP	State Development and Redevelopment Plan
SGIIP	Smart Growth Infrastructure Investment Program
SGO	Smart Growth Ombudsman
SPC	State Planning Commission
TRIP	Targeted Revitalization Incentive Program
UCC	Urban Coordinating Council
UEZ	Urban Enterprise Zone