MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING, dated this 1st day of December 2004 is entered into by and between the New Jersey State Planning Commission (Commission) and the New Jersey Council on Affordable Housing (the Council) to establish a cooperative planning process that will foster constitutional and legislative mandates outlined in both the Fair Housing Act and the State Planning Act.

WHEREAS, the New Jersey Supreme Court determined, in its Mount Laurel decisions, that every New Jersey municipality has a constitutional obligation to provide, through its land use regulations, a realistic opportunity for a fair share of the region's present and prospective needs for housing that is affordable to low and moderate income families; and

WHEREAS, in response to the Mount Laurel decisions, the New Jersey Legislature enacted the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) on July 2, 1985 and created the Council as the administrative alternative to the court and granted the Council primary jurisdiction in determining municipal compliance with the Fair Housing Act; and

WHEREAS, the Legislature, recognizing that an adequate response to judicial mandates respecting housing for low and moderate-income persons requires sound planning to prevent sprawl and to promote suitable use of land, also adopted the State Planning Act (N.J.S.A. 52:18A-196 et seq.) as companion legislation to the Fair Housing Act to be effective on January 2, 1986; and

WHEREAS, the State Planning Act required the Commission to develop the 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, the intent of the State Planning Act is to achieve better coordination of statewide land use policies among all levels of government; and

WHEREAS, the State Plan includes policies designed to promote low and moderate-income housing through code enforcement, housing subsidies, community-wide housing approaches, and coordinated efforts with the Council; and

WHEREAS, the State Plan also includes a goal of providing adequate housing at a reasonable cost for low and moderate income households; creating and maintaining housing at appropriate locations and densities while removing unnecessary regulatory and financial barriers to the delivery of housing; and

WHEREAS, Cross-acceptance is the process for developing the State Plan involving input from all levels of government, and Plan Endorsement is the process for implementing the State Plan at the local and regional levels; and

WHEREAS planning for affordable housing should be an essential element of the Cross-acceptance and Plan Endorsement processes; and

WHEREAS, the Fair Housing Act recognizes that low and moderate income housing planning and financing mechanisms must be in accordance with regional considerations and sound planning principles; and

WHEREAS, to ensure coordinated efforts between the Council and the Commission, a previous Memorandum of Understanding, predicated upon a State Plan that was adopted on June 12, 1992, was approved by both entities on October 27, 1992 and September 18, 1992 respectively; and

WHEREAS, new policies initiated by both entities warrant a revision of the previously approved Memorandum of Understanding; and

WHEREAS, in accordance with the Fair Housing Act, the Council has included administrative rules and procedures in its third round rules that utilize the State Plan and the State Plan Policy Map (SPPM) when considering certification of municipal housing elements and fair share plans as well as requests for site specific relief that are directed to the Council from the courts; and

WHEREAS, the Commission has promulgated administrative rules and procedures pertaining to Plan Endorsement in which the plans of municipal petitioners, including the housing element of the master plan required by the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), will be reviewed, and if found to be consistent with the State Plan and regional goals, endorsed by the Commission; and

WHEREAS, the Council has promulgated administrative rules and procedures pertaining to Substantive Certification in which the housing element of the municipal master plans and a fair share plan submitted by municipal petitioners will be reviewed, and if found to be consistent with the Fair Housing Act, the State Plan and the Council's rules, will be certified by the Council; and

WHEREAS, the Plan Endorsement Guidelines approved by the Commission state that any municipality seeking Advanced Plan Endorsement must document in its petition that it has received a current Resolution of Substantive Certification from the Council or a judgment of compliance from the courts; and

WHEREAS, it is mutually beneficial to the Council and the Commission to enter into this Memorandum of Understanding to develop a cooperative planning process that will enable the Council to meet its constitutional and legislative mandate to develop a planning and financing mechanism for low and moderate income housing that is in accordance with regional considerations and sound planning concepts and ensure that the Commission maintains, revises and implements a State Plan that promotes the distribution of affordable housing throughout

New Jersey in locations and patterns that are consistent with the goals of the State Planning Act; and

WHEREAS, the cooperative planning process developed pursuant to this Memorandum of Understanding 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.

NOW THEREFORE, in consideration of the principles, assurances and premises contained in this Memorandum of Understanding, the Commission and the Council hereby agree to the following:

1. Both the Commission and the Council will share all available information useful or necessary to achieve the objectives of this Memorandum of Understanding. The Commission will direct the Office of Smart Growth (OSG) to provide the Council, in a timely manner, such reports, petitions, recommendations or reviews that are necessary for the Council to carry out its responsibilities, including reports, petitions, recommendations or reviews generated through the Cross-acceptance and Plan Endorsement processes. The Council will direct its staff to notify OSG of all petitions for certification of a housing element and fair share plan that are received and to provide OSG with all reports, recommendations and reviews generated through the Council's Substantive Certification process in a timely manner, that will aid the Commission in reviewing municipal Plan Endorsement petitions.

2. The Commission and the Council agree that simultaneous participation by municipalities in the processes of both entities will be encouraged at the time a municipality either petitions the Council for Substantive Certification or petitions the Commission for Plan Endorsement, and that any information submitted to one entity shall be consistent with that submitted to the other, including residential and employment growth projections.

3. A cooperative planning process will be established and maintained between the Commission and the Council and their respective staff to advance coordinated and comprehensive State and regional planning, consistent with the State Plan, and provide consistent planning policies on which municipalities and counties may rely.

4. The State Plan Policy Map (SPPM), which includes planning areas, designated centers, critical environmental sites, and historic and cultural sites, provides the Council with a framework for 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 affordable housing obligation, in a manner consistent with the goals, objectives, and policies of the State Plan. Planning Areas 1 and 2 and designated centers are the preferred locations for a municipality to address its growth share obligation in a manner that is consistent with the goals, objectives, and policies of the State Plan.

5. The Commission shall include population, household and employment growth projections for each municipality in the State Development and Redevelopment Plan, including projections for the year 2015. Growth projections for each municipality shall be published in the Commission's adopted plan as "Plan Projections."

6. The Commission shall require any municipality seeking Advanced Plan Endorsement, in accordance with the State Planning Rules, N.J.A.C. 5:85.1 et seq., either on its own or as part of a county, regional or inter-municipal petition, to have current Substantive Certification from the Council, or a current judgment of compliance from the court.

7. Any municipality with a grant of Substantive Certification from the Council shall include in its third year monitoring report to the Council evidence of receipt of Initial Plan Endorsement from the Commission.

BE IT FURTHER AGREED that the Commission and the Council authorize this Memorandum of Understanding to be duly executed by their authorized representatives to be effective on the date first written above.

BE IT FURTHER AGREED that this Memorandum of Understanding shall remain in effect unless either party determines with 60 days notice to the other party, to terminate the Memorandum of Understanding.

NEW JERSEY STATE PLANNING COMMISSION

By: _____

Title: Executive Director

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

By: Lucy Vandermure

Title: Executive Director