

August 26, 2021

State Planning Rules update: Outline of sections with proposed changes of note

*Blue highlight indicates new language or revision made since last PIC meeting in August, 2021. Yellow highlight indicates new language as shown in text.

*Formatting issues in track changes document are addressed in the clean copy

5:85-1.4 Definitions

P 5. **Action Plan** – Revised to increase clarity.

“Action Plan” means an outline of the additional actions that must be taken by the petitioner as determined by the Executive Director in consultation with the Plan Implementation Committee, to complete the self-assessment, visioning or other actions necessary to achieve consistency with these steps; and initial consistency with the State Development and Redevelopment Plan and endorsement by the State Planning Commission. An Action Plan will provide timelines for the petitioner and relevant State agencies to complete required tasks; and the relevant State agencies to review and evaluate petitioner submissions.

p. 5 **“DAYS”** - means business days, which shall be Monday through Friday, except for federal or state holidays.

p 6. **Certificate of Eligibility** – Removed. One of several options or steps in the PE process that is no longer used or relevant.

P 6. **Critical Environmental Site (CES)** – Minor revision to the definition adding “nodes and cores”.

p 7. **Cross–Acceptance Report** - Revised to include development of an online “Response Template”. OPA believes new approach should be to develop an online Cross Acceptance Response Template, whereby comments and/or multiple-choice responses can be more easily generated, uploaded, organized and analyzed by the OPA. Counties shouldn't be required to prepare their own standalone reports, but rather respond to the draft preliminary State Plan, using a simplified online format. Idea is to make participation easier and more efficient, as well as to use technology to organize comments in a manner that will be most useful to OPA.

p 7. **Display Ad** – Removed and replaced with Legal Advertisement. Reference of display ad only shows up a couple times in the Rules, while legal advertisements are more widely used/accepted practice.

p 6. **Distributed** - New definition added in response to request for global language to address allowance for both mailed and electronic distribution, i.e., means any document that is released either electronically, online and/or by first class mail.

p 8. **Historic and cultural site (HCS)** – Definition revised to remove reference to mapping of such areas in the State Plan Policy Map which isn't done as there are too many to map and otherwise duplicative to municipal historic and cultural resources inventory that is a conditional requirement for plan endorsement where warranted.

p 8. **Impact Assessment** – Revised to address climate change (mitigation and resiliency), social justice, and quality of life/community livability. Requirement is not found in the State Planning Act. If carried forward, consider adding language as to what this assessment should address, criteria, etc.

p 9. **Natural system** – Definition removed as term only used in definition of a CES.

p 9. **Neighborhood Plan** – Removed from definitions as SPC does not endorse units smaller than local government.

p 9. **OPA** – Definition revised to also mean “Office” in reference to OPA , or its successor.

p 10. **Plan Endorsement Advisory Committee** – Revised role of liaison from required to optional to reflect reality of what actually happens. With change, role limited to guide and assist, and increase public awareness of and participation in the plan endorsement process. New language emphasizes role in review of the Self-Assessment report.

“Plan Endorsement Advisory Committee” or “The Advisory Committee” means a committee appointed by the mayor or governing body to increase public awareness of and participation in the plan endorsement process, and to guide and assist in the development and/or review of the self-assessment report, and recommendations therein. Upon the consent of the

governing body, the Advisory Committee may also serve as liaison with the State, county, regional and local officials throughout the plan endorsement process and participate in meetings between the petitioner, the Office of Planning Advocacy and other relevant State agencies.

p 10. **PE Guidelines** – Minor revision, added language.

p 11. **Plan endorsement process or plan endorsement** – Revised to reflect updated language in the PE Guidelines 2020, including added references to the Action Plan and PIA.

“Plan endorsement process” or “plan endorsement” or “endorsement” means the process undertaken by a municipality, county, regional or other relevant planning entity or any grouping thereof, to petition the State Planning Commission for a determination of consistency of the submitted plan with the State Development and Redevelopment Plan and wherein upon successful completion of requirements outlined in an Action Plan and as may be conditioned in a Plan Implementation Agreement and Memorandum of Understanding, the State Planning Commission shall make a determination that the submitted plan is consistent with the State Development and Redevelopment Plan, taking into account pertinent State agency statutes, rules, regulations, policies, and programs, and approve a petition for plan endorsement, wherein said plan shall then be considered endorsed. It is through Plan Endorsement that local, county and State governments may work together to develop coordinated capital investment and planning implementation mechanisms that are consistent with the State Plan and with each other. Completion of the Plan Endorsement requirements makes the petitioner eligible for benefits provided by State agencies.

p 11. **PE Renewal** – New section in Rules required a definition.

“Plan Endorsement Renewal” or “endorsement renewal” means the process undertaken by a municipality, county, or regional entity, to petition the State Planning Commission to renew its endorsement at the conclusion of the previous 10-year plan endorsement period, when a petitioner’s previously endorsed plan is brought into consistency with the current State Plan and any additional procedures from the current State Plan Endorsement Guidelines and related support materials.

p 12. **Plan Implementation Agreement (PIA)** – Revised with an expanded definition – Meant to clarify expectations regarding consistency with the State Plan and mirror update to PE Guidelines.

“Plan Implementation Agreement” (PIA) means an agreement between the State Planning Commission and the petitioner that sets forth the planning implementation measures and a schedule thereof, for the petitioner to undertake during the 10-year endorsement period so that the petitioner will achieve the goals and vision described in the endorsed plan, and State agency benefits needed to successfully implement the petitioner’s action items agreed to in their endorsement. The PIA ensures implementation of the plan is consistent with State Plan goals, policies and strategies. The PIA will be adopted as part of the resolution of the State Planning Commission granting Plan Endorsement to the petitioner. The maintenance of an endorsed plan’s status during the 10-year endorsement period, will be contingent upon fulfilling the obligations in the PIA as evaluated pursuant to N.J.A.C. 5:85-7.21 and the monitoring of endorsed plans and designated centers.

p 12. **Plan Implementation Committee (PIC)** - Given definition, previously not defined.

“Plan Implementation Committee” (PIC) means a subcommittee of the State Planning Commission authorized to review Plan Endorsement petitions, State Policy Map Amendment petitions and other work products in advance of consideration by the State Planning Commission.

p 12. **Regional Agency** – Definition changed to reflect regional guidance document created by OPA in 2020.

“Regional agency” and “regional entity” means an agency working with one or more counties or municipalities, counties working with each other or one or more municipalities, or multiple municipalities working together for the purposes of plan endorsement or to perform planning for land development, infrastructure or capital investment planning for a region.

p 13. **Smart Growth Areas** – Definition created to correspond with the long-established Smart Growth Areas Map. It is hoped that the definition will create more uniform understanding in usage among State agencies and lawmakers, as there has been confusion in past. “Smart Growth Areas” means Metropolitan (PA1) and Suburban Planning Areas (PA2), Designated Centers, Cores and Nodes, Highlands Centers, Meadowlands Smart Growth Areas, Pinelands Growth Areas, Villages and Towns, and other designated growth areas as determined by the State Planning Commission and depicted on the New Jersey State Plan Policy Map.

p 14. **Written comment** – New definition created to mean public comment provided either electronically or by first class mail. “Written comment” means public comment provided either electronically or by first class mail.

Rules:

5:85-1.7 Public notice requirements, form content and timing – For entity petitioning for a map amendment, language added to require notice to include adjoining municipalities.

1.7 (c) In addition to the public notice provisions provided in (b) above, notice of hearings on the draft Final State Development and Redevelopment Plan and the draft Infrastructure Needs Assessment held pursuant to N.J.A.C. 5:85-5.2(a) shall be published at least 30 days in advance of the hearing in a legal advertisement in at least two newspapers designated by the municipality for publication of public notices, which circulate in the area served by the hearing and provided with at least 30 days’ notice to the governing body and planning board of each county and municipality in the area served by the hearing.

1.7(g) 2. By providing written notice to the mayor, clerk and planning board of each municipality in which the property that is the subject of the petition is located and of each municipality which adjoins the municipality in which the property that is the subject of the petition is located;

1.7(g) 4. Removed, “If petition is for a minor map amendment”...*Revision is to ensure that 200-foot notice is made by a private entity in all cases where petition is for a mapping amendment.

By providing written notice to all owners of property that is subject of the petition and all owners of property within 200 feet of the property or area that is subject of the petition;

5:85-3.1 Commencement of comparing plans - The State Planning Commission shall conduct a joint public informational meeting in person or virtually upon request, with each county planning board in each county for the purpose of providing information on the Preliminary State Development and Redevelopment Plan

5:85-3.6 Municipal participation in the cross-acceptance process – Removed the requirement for municipalities to provide certain planning documents as part of cross-acceptance, finding requirement an unnecessary and burdensome for towns and OPA.

5:85-4.5 The negotiation process - The staff of the Office of Planning Advocacy will meet in person or virtually upon request with the authorized representatives of each negotiating entity.

5:85-5.2 Required public hearings – (a) There shall be a minimum of six public hearings on the draft Final State Development and Redevelopment Plan in different locations throughout the state or held virtually. At least one meeting will be held in person in a central location.

5:85-5.3 Municipal and county review and comment before adoption of Final State Development and Redevelopment Plan – new language added: The State Planning Commission shall provide an electronic format for providing written comments for this purpose. Municipalities and counties shall utilize the technology and instructions as provided by the State Planning Commission.

*Similar to the Cross-Acceptance reports, intent is to require utilization of online technology to streamline the comment and review process, which could save considerable public resources, while enhancing and modernizing the comment process. OPA believes that a uniform format/template has potential to greatly increase participation by simplifying the process, as well as ensuring that the comments provided are in organized in manner as useful as possible to the SPC.

5:85-7.3 Applicability - Regional entities have been further described per OPA’s guidance document, as well as expanded upon in definitions section.

7.39(a)5 - A regional entity or county working with one or more municipality as partners, whereby the municipalities pursue plan endorsement independently, but rely on one or more regional or county planning elements towards fulfilling their respective plan endorsement submission requirements where consistent with the State Plan and plan endorsement guidelines;

5:85-7.5 State agency responsibilities - Each State agency member of the State Planning Commission, and any other relevant State agency or authority, at the request of the State Planning Commission or the Executive Director, shall prepare and periodically update a list of State agency benefits

5:85-7.7 Pre-petition submission requirements, scheduling and meeting - A prospective municipal petitioner shall request a meeting with the Office of Planning Advocacy when considering whether to petition for plan endorsement...
*Pre-petition is a required step for PE. The word “May” changed to “Shall”.

5:85-7.8 Advisory committee appointment and membership - Expanded language from 2020 PE Guidelines update, regarding greater inclusion and public engagement, use of Green Teams. *Received comments recommending discretion to allow Planning Boards or ECs to serve in smaller towns. Response: OPA is concerned that in permitting use of an EC or Planning Board, many towns will appoint their PB moving forward, which is not intent of the Rules. The Green Team is uniquely suited for this role. Requested change is unnecessary as the Exec. Dir. has discretion to grant a waiver should compelling reason arise to appoint a PB or EC to serve in this capacity.

7.8 (a) Petitioner shall appoint an advisory committee to help guide and actively participate in the plan endorsement process, increase public awareness of and maximum participation by the community in planning its future, and to guide and assist in the development and/or review of the self-assessment report, and recommendations therein. Upon the consent of the governing body, the Advisory Committee may also serve as a liaison with the State, county, regional and local officials throughout the plan endorsement process, and participate in meetings between the petitioner, the Office of Planning Advocacy, and other relevant State agencies. Appointments shall be made in accordance with any relevant local government ethics law and be designed to avoid any appearance of impropriety. Petitioner shall ensure that committee membership is representative of the whole community, including participation from historically underserved populations, without bias toward any one or more interest groups.

5:85-7.9 Self-Assessment Report, form, content, adoption and submission requirements -
Checklist was substantially revised to reflect 2020 updates to the PE Guidelines and MSA Template.

5:85-7.10 State agency Opportunities and Constraints Assessment and Report – Minor language added to address social equity and resilience to climate change

5:85-7.11 Community visioning process, vision statement development and adoption, and submission requirements - Minor edits integrating 2020 PE Guideline updates, including requirement to have at least one public meeting/hearing also held virtually, use of technology in outreach and engagement, and expanded efforts to engage socially vulnerable populations who have historically been underrepresented in these processes

5:85-7.13 Consistency review – Added language to address climate resilience, GHG reduction, environment justice, affordable housing, Master Plan Circulation Element and Complete Streets Policy & Implementation Plan, and DEP-required natural resource protection ordinances.

5:85-7.14 Finding of consistency and recommendation report – If the Executive Director determines that additional action must be taken to complete the self-assessment, visioning or other action necessary to achieve initial consistency with these steps the Executive Director shall, in consultation with the relevant State agencies and petitioner, develop an Action Plan within 45 days of the conclusion of the 90-day consistency review period...
Comment: Initial consistency is with the steps as outlined in community visioning, self-assessment, and more generally, with the goals of the State Plan, and are addressed with completion of the Action Plan.

5:85-7.15 Action Plan – Moved section to come before PIA to reflect process as it actually now happens. Minor revisions made to increase clarity and expectations.

5:85-7.16 Certificate of Eligibility – Staff decision was to remove section as it is no longer used or relevant.

5:85-7.17 Draft Plan Implementation Agreement and Memorandum of Understanding adoption, submission and completion – This step now follows preparation of the Action Plan.

7.17 (a) Within 45 days of receiving the draft Plan Implementation Agreement and Memorandum of Understanding, the Planning Commission shall determine whether the draft Plan Implementation Agreement and Memorandum of Understanding are appropriate to achieve consistency with the State Plan and any additional procedures from the State Plan Endorsement Guidelines and related support materials. *Timeline for SPC action added.

7.17(f) 7 - An approved Plan Implementation Agreement may only be amended for good cause shown at the discretion of the Executive Director. Any amendments to a Plan Implementation Agreement shall be provided to the Commission and the public pursuant to N.J.A.C. 5:85-1.7(h) and 7.4(b), unless undertaken pursuant to N.J.A.C. 5:85-7.22(c).

*New language provides for minor revision to a PIA as outlined at 7.22(c).

717(f) 8. 8. Endorsed plans and Centers may be revoked by the Commission in the event petitioner fails to satisfy Plan Implementation Agreement deadlines, based on a recommendation by the Executive Director, in consultation with relevant State agencies.

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

5:85-7.19 Plan endorsement by State Planning Commission - See minor edits integrating 2020 PE Guidelines update language. References PIA consistency.

5.85-7.21 Period of endorsement – Minor edits, addition of language pertaining to notice of endorsement expiration and Highlands Region eligibility, regarding receiving the same benefits for plan conformance communities.

(b) Within 45-days of expiration of endorsement, the Executive Director shall advise the State Planning Commission of the expiration and provide written notice to the appropriate state agencies, municipal and county governing bodies, or regional agency, advising them of same.

(c) In the Highlands Region, as defined by N.J.S.A. 13:20-7, the Highlands Council's certification of a municipality or county in the Highlands Region whose master plan and associated regulations to have been approved by the Highlands Council pursuant to N.J.S.A. 13:20-18.a, to be in conformance with the Highlands Regional Master Plan, qualifies 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. New language.

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

7.22 (b) Within one year from the date of endorsement, municipalities, counties, or other relevant planning entities having endorsed plans or previously designated centers shall provide an annual report to the Executive Director on the status of their Planning and Implementation Agreement efforts, with biennial reports due thereafter. In order to be accepted by the Office of Planning Advocacy, the annual or biennial report must be submitted within the year in which it is required. The annual and biennial reports shall state how the endorsed entity is meeting the Plan Implementation Agreement timelines and requirements, both due and upcoming.

7.22 (c) Within 45-days of receipt of each monitoring report, the Executive Director shall submit a letter to the endorsed entity, indicating the extent to which the terms of the Plan Implementation Agreement are being met, including any concerns or corrective actions to be addressed towards its completion as necessary to receive a determination of eligibility from the Executive Director to pursue the expedited Plan Endorsement Renewal process upon the satisfactory review of the final 8-year biennial review in accordance with 5:85-7.22(f),(g).

7.22 (d) - New language added to permit requests for minor revisions to PIA as part of biennial review at discretion of the Exec. Dir. in consultation with the PIC, unrelated to mapping changes.

7.22 (e) – New language added to have OPA provide a letter to towns at least 45-days prior to the final 8-year monitoring review, outlining any remaining incomplete tasks identified for completion under the PIA, as well as advise as to the extent to which the endorsed plan is presently eligible for PE renewal, based on the status of previous biennial submissions, overall performance and good faith efforts to date in completing tasks and meeting completion timelines as specified under the PIA.

Also added the following new language per PIC meeting held on 8/18 regarding, “completing required tasks and timelines”.

7.22 (f) – New language added to have endorsed entities address remaining incomplete PIA items in the final 8-year biennial report which shall indicate intent to pursue Plan Endorsement Renewal, and if so, how the PIA efforts to date, demonstrate consistency with the State Plan and terms of the PIA. The extent to which the PIA tasks have been completed shall determine whether the endorsed entity shall be granted the opportunity to pursue the PE Renewal process or go through standard Plan Endorsement.

Additional new language per 8/18 PIC meeting: **The required tasks outlined in the Plan Implementation Agreement shall be completed within timelines provided unless otherwise negotiated in advance of expiration in accordance with 5:85-7.22(d) or as amended pursuant to 5:85-7.24. Any discrepancies shall be justified with supporting evidence in the monitoring report within which the required action and timeline for completion is required.**

7.22 (g) - New language added. Within 6 weeks **(changed to 45-days)** of receipt of the final 8-year biennial report, the Executive Director shall, in consultation with the PIC, send a letter to the endorsed entity, advising which endorsement process will be made available based on the extent to which the report has satisfactorily addressed any remaining tasks as outlined in the PIA. For reports that demonstrate substantial completion and overall good faith efforts to achieve consistency with the petition, the letter shall outline any remaining actions necessary for the Executive Director to certify eligibility to pursue PE renewal.

Additional new language per 8/18 PIC meeting: **completion in meeting the timelines and requirements of the Plan Implementation Agreement.**

7.22 (h) – New section: **For municipalities, counties, or other regional agencies with endorsed plans adopted before the enactment of these rules, which are two or less years from the expiration of their endorsement, the Executive Director shall, in consultation with the Plan Implementation Committee, have the discretion to make a determination of the eligibility for expedited Plan Endorsement Renewal, based on the extent to which the Petitioner has completed the tasks as outlined in the Plan Implementation Agreement prior to expiration.**

5:85-7.23 Renewal of endorsed plans and designated centers – New section integrating proposed renewal process.

7.23 (b) – Additional new language added per 8/18 PIC meeting: **Upon the consent of the Plan Implementation Committee, the Executive Director shall have authority to certify whether a Petitioner is eligible to pursue the expedited Plan Endorsement Renewal process as determined upon the extent to which the terms of the previous Plan Implementation Agreement have been satisfied, consistent with the petition as endorsed by the State Planning Commission. Departure from consistency or failure to meet the timelines and requirements of the previous Plan Implementation Agreement without sufficient cause would make the Petitioner ineligible to pursue Plan Endorsement Renewal.**

7.23 (c) – Additional new language added per 8/18 PIC meeting: **Twelve (12) months prior to the expiration of endorsement, the Executive Director shall send notice advising the Petitioner, whether terms of their previous Plan Implementation Agreement have been satisfied consistent with the petition as endorsed by the State Planning Commission. For petitioners that have demonstrated substantial progress towards the completion of tasks under the Plan Implementation Agreement, and sustained engagement with the Office of Planning Advocacy as evidenced by the submission of compliant monitoring reports received when due, the letter will certify their eligibility to pursue the expedited Plan Endorsement Renewal process. The Executive Director may condition certification on the completion of any outstanding or incomplete actions required under the Plan Implementation Agreement as necessary to achieve consistency prior to expiration of the current endorsement.**

7.23 (d) - new section added per 8/18 PIC meeting: **If the Plan Implementation Committee determines that the terms and conditions of the Plan Implementation Agreement have not been satisfied to the extent necessary to achieve consistency with the petition as approved by the State Planning Commission, then it shall advise the Executive Director to send notice to the Petitioner twelve (12) months prior to the expiration of endorsement, stating the reasons why their petition has been deemed ineligible for the expedited Plan Endorsement Renewal process, including an outline of outstanding consistency items to complete in order to be considered eligible to pursue the standard Plan Endorsement process in accordance with 5:85-7.1-7.21.**

7.23 (e) - Additional new language added per 8/18 PIC meeting: If eligible, within eight (8) months (was 10) prior to the expiration of Endorsement, the mayor of the endorsed entity shall submit a letter to the Executive Director, along with a certified copy of a resolution adopted by the governing body at a public meeting, petitioning the State Planning Commission to renew their Endorsement. The letter shall state why the municipality is seeking renewal, outline assistance and benefits they seek from the State and include requests for map amendments (if any). The letter shall request a Plan Endorsement Renewal meeting and will be accompanied by:

7.23 (d) 1. - New revised language:

- i. Statement of actions taken toward addressing climate resilience planning and mitigation;
- ii. Statement of actions taken toward addressing environmental justice and social equity;

5:85-7.25 Petitions to amend endorsed plans, previously designated centers, Planning and Implementation Agreements

(b) 1. Revised language would permit a justification statement in place of requirement for a self-assessment report.

5:85-8.3 Map amendments

5:85-8.4 Procedures – Substantially revised language regarding amendments where petitioner is an individual or private entity, public notice, hearing process requirements.

(b) A petition to amend the State Plan Policy Map shall include at a minimum:

3. A statement describing:

- i. How the amendment promotes local, regional and State goals and objectives;
- ii. How the amendment will impact the local zoning district in which the State Plan Policy Map amendment is proposed;
- iii. How the amendment will impact infrastructure and associated capacity in the municipality in which the State Policy Map amendment is proposed;
- iv. How the amendment will impact adjacent municipalities;
- v. How the amendment will impact adjoining zoning districts of adjacent municipalities;

(c) The Executive Director of the Office of Planning Advocacy shall forward one copy of the petition proposed map amendment, along with a cover letter, to the appropriate municipal and county governing bodies and planning boards for their review and comment. The cover letter shall include a general outline detailing the respective roles of the appropriate governing bodies, planning boards, Petitioner, State Planning Commission, and Office of Planning Advocacy, along with any other pertinent procedural information associated with the proposed map amendment process pursuant to N.J.A.C. 5:85-1.7(g) and as set forth (b) above. If no comment is received within 90 days after mailing said petition, the municipality or county shall be deemed to have no comment on the proposed map amendment.

(f) If an individual or private entity initiates a map amendment, the appropriate municipality within which the amendment is proposed, may, at its discretion, hold an in-person or mixed mode public hearing to receive testimony on the map amendment in accordance with the Open Public Meetings Act, N.J.S.A 10:4-6 et seq;

*Note, “shall” replaced with “may” to make the public hearing optional to address concerns.

1. At least 10 days prior to the public hearing date, the individual or private entity initiating the map amendment, shall provide notice in accordance with 5:85-1.7(g).

Note, “g” addresses 200-foot list requirements for all individual or private entity petitions.

2. The municipality shall provide the Executive Director with proof that notice of the hearing on the map amendment has been provided pursuant to N.J.A.C. 5:85-1.7(g) in the form of an affidavit of publication;

3. At the conclusion of the public hearing, the municipality shall consider adopting a certified resolution expressing either support or opposition to the map amendment petition;

4. Within 30 days, a copy of the resolution and meeting minutes at which the hearing on the map amendment petition was held, shall be mailed to the Executive Director. The minutes shall include a summary of public comments and copies of written comments filed before or at the public meeting; and