

**CHAPTER 85
STATE PLANNING RULES**

Authority

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

Source and Effective Date

R.2003 d.336, effective July 15, 2003.
See: 35 N.J.R. 304(a), 35 N.J.R. 1990(a), 35 N.J.R. 3819(a).

Chapter Expiration Date

Chapter 85, State Planning Rules, expires on July 15, 2008.

Chapter Historical Note

Chapter 32, State Planning Rules, became effective with Subchapter 1, General Provisions; Subchapter 2, Preparation of Preliminary State Development and Redevelopment Plan, and Subchapter 3, Procedures for Conducting Cross-Acceptance, adopted as R.1988 d.121, effective March 21, 1988. See: 19 N.J.R. 1971(b), 20 N.J.R. 673(a). A Petition for Rulemaking was filed with the State Planning Commission on November 20, 1989. See: 22 N.J.R. 259(b), 22 N.J.R. 565(a). Subchapter 4, Procedures for Conducting the Negotiation Phase of Cross-Acceptance, was adopted as R.1990 d.336, and Subchapter 3 was amended and redesignated Procedures for Conducting the Comparison Phase of Cross-Acceptance, effective July 2, 1990. See: 22 N.J.R. 621(c), 22 N.J.R. 2033(a). Subchapter 5, Procedures for Conducting the Issue Resolution Phase of Cross-Acceptance was adopted as R.1991 d.457, effective September 3, 1991. See: 23 N.J.R. 1778(b), 23 N.J.R. 2654(a). Subchapter 6, Letters of Clarification; Subchapter 7, Voluntary Submission of Plans for Consistency Review, and Subchapter 8, Amendment of the Resource Planning and Management Map, were adopted as R.1992 d.253, effective June 15, 1992. See: 24 N.J.R. 1241(a), 24 N.J.R. 2287(a).

Pursuant to Executive Order No. 66(1978), Chapter 32, State Planning Rules, was readopted as R.1993 d.165, effective March 19, 1993. See: 25 N.J.R. 461(a), 25 N.J.R. 1886(c). The name of Subchapter 2, Preparation of Preliminary State Development and Redevelopment Plan, was changed to Preparation of a Preliminary State Development and Redevelopment Plan by R.1997 d.7, effective January 6, 1997. See: 28 N.J.R. 4084(a), 29 N.J.R. 150(b). The name of Subchapter 5, Procedures for Conducting the Issue Resolution Phase of Cross-Acceptance, was changed to Procedures for Conducting the Final Review Phase of Cross-Acceptance by R.1997 d.7, effective January 6, 1997. See: 28 N.J.R. 4084(a), 29 N.J.R. 150(b).

Pursuant to Executive Order No. 66(1978), Chapter 32, State Planning Rules, was readopted as R.1998 d.120, effective February 4, 1998. See: 29 N.J.R. 5055(a), 30 N.J.R. 860(a).

Chapter 32 of Title 17, State Planning Rules, was recodified as N.J.A.C. 5:85 and readopted as R.2003 d.336, effective July 15, 2003. See: Source and Effective Date. See, also, section annotations.

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Amended by R.2004 d.186, effective May 17, 2004.
 See: 35 N.J.R. 4001(a), 36 N.J.R. 2490(c).
 In (a), rewrote 1 and 2, deleted 4; added (b).

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5:85-1.3 Applicability

This chapter shall apply to all activities and actions of municipal and county governments, the State Planning Commission, regional and State Agencies, negotiating entities, and petitioners concerning the State Development and Redevelopment Plan.

Amended by R.1997 d.7, effective January 6, 1997.
 See: 28 N.J.R. 4084(a), 29 N.J.R. 150(b).
 Amended by R.2004 d.186, effective May 17, 2004.
 See: 35 N.J.R. 4001(a), 36 N.J.R. 2490(c).

Inserted "regional and" preceding "State Agencies"; and substituted "negotiating entities, and petitioners concerning" for "and any negotiating entity designated by the Commission in the preparation, review and implementation of".

SUBCHAPTER 1. GENERAL PROVISIONS

5:85-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 5:85, State Planning Rules.

5:85-1.4 Definitions

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

Amended by R.2003 d.336, effective August 18, 2003.
 See: 35 N.J.R. 304(a), 35 N.J.R. 1990(a), 35 N.J.R. 3819(a).
 Amended the N.J.A.C. reference.

5:85-1.2 Purpose and authority

(a) This chapter is adopted by the State Planning Commission pursuant to N.J.S.A. 52:18A-203 in order to establish an orderly and efficient process for the preparation, adoption, and implementation of the State Development and Redevelopment Plan. In support thereof, it is determined that in order to fulfill the purposes and to satisfy the requirements of the State Planning Act, it is necessary and appropriate that:

"Advanced petition" means the optional submission to the State Planning Commission by a petitioner of one or more of its adopted planning efforts, other than those plans and other materials that are required to be submitted as part of an initial petition for plan endorsement. An advanced petition must contain the information required to be submitted to the State Planning Commission pursuant to N.J.A.C. 5:85-7.7 in order for a petitioner to obtain advanced plan endorsement. A petitioner may submit an advanced petition either with an initial petition or after an initial petition has been endorsed by the State Planning Commission. A petitioner may submit additional advanced petitions as it adopts additional planning efforts. The State Planning Commission shall only endorse an advanced petition if it is consistent with the State Development and Redevelopment Plan and if the petitioner's initial petition either has been endorsed by the State Planning Commission or is being endorsed simultaneously with the advanced petition if the petitioner has submitted an advanced petition at the same time as the initial petition.

1. The cross-acceptance, plan endorsement, and map amendment processes be structured so as to establish vertically and horizontally integrated and consistent local, county, regional and State plans;
2. The State Planning Commission take all reasonable steps to ensure municipal, county and public participation in cross-acceptance and in plan endorsement; and
3. The detail and substance of the Preliminary State Development and Redevelopment Plan be enhanced by early and direct county, municipal and public participation.

(b) State Planning Commission action pursuant to these rules represent determinations of overall consistency with the State Development and Redevelopment Plan. These actions do not serve to either "validate" or "invalidate" a specific code, ordinance, administrative rule, regulation or other plan implementation mechanism.

"Center" means an efficient and compact form of development having one or more mixed-use cores and residential neighborhoods and green spaces. Center designations are based on the area, population, density, and employment of the center being considered and features of the surrounding areas. Centers can range in scale from very large, an Urban Center, to the smallest, a Hamlet. Centers range in scale in the following order: Urban, Regional, Town, Village, and Hamlet. Descriptions and criteria for designating each type of center are located in the New Jersey State Development and Redevelopment Plan.

Amended by R.1997 d.7, effective January 6, 1997.
 See: 28 N.J.R. 4084(a), 29 N.J.R. 150(b).
 Deleted (a)2, relating to a review and comment process; and recodified (a)3 through (a)5 as (a)2 through (a)4.

SUBCHAPTER 5. PROCEDURES FOR ADOPTING THE FINAL PLAN

5:85-5.1 Commencement of Final Plan approval

Upon consideration of the formal reports of the negotiating entities and the State Planning Commission's negotiating committee, the draft Final State Development and Redevelopment Plan prepared by the negotiating committee and the Impact Assessment, the State Planning Commission shall prepare and approve for distribution a draft Final State Development and Redevelopment Plan, which will also include the draft Infrastructure Needs Assessment. The draft Final State Development and Redevelopment Plan shall be distributed at least 14 days in advance of the first public hearing to each negotiating entity, county and municipal planning board, mayor, board of chosen freeholders, county executive or county administrator, county and municipal clerk and to those interested persons and organizations who have registered with the Office of Smart Growth pursuant to N.J.A.C. 5:85-1.6(b). The draft Final State Development and Redevelopment Plan shall also be available at the Office of Smart Growth and on the Office of Smart Growth's website.

Amended by R.1997 d.7, effective January 6, 1997.
See: 28 N.J.R. 4084(a), 29 N.J.R. 150(b).

Substantially amended section.

Amended by R.2003 d.336, effective August 18, 2003.
See: 35 N.J.R. 304(a), 35 N.J.R. 1990(a), 35 N.J.R. 3819(a).

Amended the N.J.A.C. reference.

Amended by R.2004 d.186, effective May 17, 2004.
See: 35 N.J.R. 4001(a), 36 N.J.R. 2490(c).

Rewrote and undesignated former (a) and deleted (b).

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 with notice provided pursuant to N.J.A.C. 5:85-1.7(b) and (c).

(b) The public hearings shall be convened by the State Planning Commission, or by a committee of the Commission designated for that purpose, whereupon comments will be taken on the draft Final State Development and Redevelopment Plan.

Amended by R.1997 d.7, effective January 6, 1997.
See: 28 N.J.R. 4084(a), 29 N.J.R. 150(b).

Amended report and N.J.A.C. references.

Amended by R.2004 d.186, effective May 17, 2004.
See: 35 N.J.R. 4001(a), 36 N.J.R. 2490(c).

Substituted "draft Final" for "Interim" throughout; rewrote (a); deleted former (b) and (c) and recodified former (d) as new (b).

5:85-5.3 Municipal and county review and comment before adoption of Final State Development and Redevelopment Plan

Municipalities and counties may submit written comments to the State Planning Commission regarding the draft Final State Development and Redevelopment Plan and the draft Infrastructure Needs Assessment at any time up to 30 days

after the last public hearing conducted pursuant to N.J.A.C. 5:85-5.2.

Amended by R.1997 d.7, effective January 6, 1997.
See: 28 N.J.R. 4084(a), 29 N.J.R. 150(b).

Amended report references.

Amended by R.2003 d.336, effective August 18, 2003.
See: 35 N.J.R. 304(a), 35 N.J.R. 1990(a), 35 N.J.R. 3819(a).

Amended the N.J.A.C. references throughout.

Amended by R.2004 d.186, effective May 17, 2004.
See: 35 N.J.R. 4001(a), 36 N.J.R. 2490(c).

Rewrote and undesignated former (a); deleted (b).

5:85-5.4 Adoption of the Final State Development and Redevelopment Plan

The State Planning Commission shall adopt a Final State Development and Redevelopment Plan, which includes the Infrastructure Needs Assessment, no sooner than 30 days and no later than 60 days after the last public hearing conducted pursuant to N.J.A.C. 5:85-5.2. Within 45 days of the State Planning Commission adopting the Final State Development and Redevelopment Plan, the Executive Director of the Office of Smart Growth shall provide notice of said adoption pursuant to N.J.A.C. 5:85-1.7(i).

Recodified from 17:32-5.5 and amended by R.1997 d.7, effective January 6, 1997.

See: 28 N.J.R. 4084(a), 29 N.J.R. 150(b).

Substituted "final review phase" for "issue resolution phase". Section was "Public participation during the issue resolution phase of cross-acceptance".

Amended by R.2003 d.336, effective August 18, 2003.
See: 35 N.J.R. 304(a), 35 N.J.R. 1990(a), 35 N.J.R. 3819(a).

Amended the N.J.A.C. references throughout.

Amended by R.2004 d.186, effective May 17, 2004.
See: 35 N.J.R. 4001(a), 36 N.J.R. 2490(c).

Rewrote the section.

5:85-5.5 (Reserved)

Recodified to N.J.A.C. 17:32-5.4 by R.1997 d.7, effective January 6, 1997.

See: 28 N.J.R. 4084(a), 29 N.J.R. 150(b).

SUBCHAPTER 6. (RESERVED)

Subchapter Historical Note

Subchapter 6, Letters of Clarification, was repealed by R.2004 d.186, effective May 17, 2004. See: 35 N.J.R. 4001(a), 36 N.J.R. 2490(c).

SUBCHAPTER 7. PLAN ENDORSEMENT

Subchapter Historical Note

Public Notice: Plan Endorsement. See: 39 N.J.R. 2546(a), 3786(a).

5:85-7.1 Purpose

(a) The State Planning Act encourages that municipal, county, and regional plans be consistent with the State Development and Redevelopment Plan. State agencies are expected

to review and coordinate their plan, programs and regulations to make them consistent with the State Development and Redevelopment Plan. During the cross-acceptance process, governments at all levels compared respective public plans and processes in general with the State Development and Redevelopment Plan. The process of plan endorsement covered by this subchapter is designed to build on that effort. Through plan endorsement, centers can be designated and State Plan Policy Map boundaries adjusted in order to significantly advance or more accurately reflect the goals, strategies, and policies of the State Development and Redevelopment Plan. Entities that receive plan endorsement, in accordance with the State Development and Redevelopment Plan, shall be entitled to a variety of benefits, including, but not limited to, priority for funding for programs identified by State agencies, coordination of planning with other agencies in meeting unique needs of the entity seeking endorsement and expedited permit review. It is the intention of the State Planning Commission, through the Office of Smart Growth, to assist all levels of government in coordinating plans and together achieving consistency with the State Development and Redevelopment Plan. To that end, this subchapter outlines a voluntary review process, which will compare municipal, county, and regional entities plans and provide findings and recommendations that would coordinate and integrate these plans in a manner consistent with the State Development and Redevelopment Plan. Plan endorsement is separated into two stages. The first stage, initial plan endorsement, provides for a petitioner submitting to the State Planning Commission the fundamental planning documents, such as the master plan, that most municipalities and counties will have already prepared. The second stage, advanced plan endorsement, provides for a petitioner submitting to the State Planning Commission any more extensive planning efforts, such as a municipality that has adopted one or more of the optional master plan elements, that the petitioner has prepared. There is no requirement that a petitioner seek advanced plan endorsement after it obtains initial plan endorsement. For both initial and advanced plan endorsement, the submitted plans will be reviewed by the State Planning Commission and endorsed if the plans are determined to be consistent with the State Development and Redevelopment Plan. Specified regulatory and funding priority benefits will be available to petitioners once an initial petition for plan endorsement is approved. Additional benefits will be made available when advanced petitions are approved, with the benefits relating to the nature of the advanced plans that are approved. As petitioners have additional advanced plans approved, they will become eligible for additional benefits. A petitioner initiating the advanced plan endorsement process will enter into a Plan Endorsement Contract with the State Planning Commission specifying the obligations of both parties to complete the advanced plan endorsement petition and specifying the benefits the petitioner will be eligible for upon approval of the advanced petition. The State Planning Commission will enter into Planning and Implementation Agreements that will implement the endorsed plan by the

petitioner and by the State agencies when both initial and advanced petitions for plan endorsement are approved.

(b) The purpose of plan endorsement is to increase the degree of consistency among municipal, county, regional and State agency plans and the State Development and Redevelopment Plan and to facilitate the implementation of said plans.

(c) Centers, cores and nodes may only be designated through the plan endorsement process.

Amended by R.1993 d.367, effective July 19, 1993.

See: 25 N.J.R. 1839(a), 25 N.J.R. 3238(c).

Amended by R.2002 d.12, effective January 7, 2002.

See: 33 N.J.R. 1511(a), 34 N.J.R. 285(a).

Rewrote the section.

Amended by R.2003 d.336, effective August 18, 2003.

See: 35 N.J.R. 304(a), 35 N.J.R. 1990(a), 35 N.J.R. 3819(a).

In (d), deleted the second sentence.

Amended by R.2004 d.186, effective May 17, 2004.

See: 35 N.J.R. 4001(a), 36 N.J.R. 2490(c).

Rewrote the section.

Case Notes

Unlike master development and redevelopment plans, ordinances are not required to be submitted for review by State Planning Commission. *Mount Olive Complex v. Township of Mount Olive*, 774 A.2d 704 (2001).

Department of Environmental Protection order directing staff to apply departmental policies and regulations in manner consistent and compatible with State Development and Redevelopment Plan to extent permitted by law was intra-agency statement not subject to formal rule-making process under Administrative Procedures Act. *New Jersey Builders Ass'n v. New Jersey Dept. of Environmental Protection*, 306 N.J.Super. 93, 703 A.2d 323 (A.D. 1997).

5:85-7.2 Eligibility

(a) Any municipal or county governing body, or regional grouping of municipal or county governing bodies, or regional agency may petition the State Planning Commission for plan endorsement of its plan.

(b) Plans eligible for endorsement are:

1. Master plans with supporting plan implementation mechanisms such as zoning maps and schedules, natural resource inventories and capital improvement programs of municipalities and counties;

2. The following plans provided that the area proposed for endorsement includes at least one entire municipality: municipal strategic revitalization plans, urban complex strategic revitalization plans, and regional strategic plans.

(c) If a municipal plan is submitted as part of a regional petition, it shall be endorsed if the municipal plan is found consistent with the State Development and Redevelopment and the regional plan.

(d) Municipalities included in urban complex strategic revitalization plans, regional strategic plans and county master plans with supporting plan implementation mechanisms that