

Final Report of the Transition Subcommittee On the Department of Community Affairs and its Agencies and Affiliates

January 5, 2010

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Executive Summary

This subcommittee reviewed the eleven divisions of the Department of Community Affairs (“DCA”) as well the five authorities or agencies that are “in, but not of” the organization.¹ The subcommittee’s findings and recommendations were developed through a series of interviews with Division heads and other senior staff at the DCA, a summary review and analysis of available data, and observations and insights provided by various constituencies that regularly interact with the DCA. The subcommittee is ready and willing to make itself available post-transition to consult with the new commissioner regarding details beyond the scope of this report. The review, analysis and recommendations provided in this report are centered on the following issues.

Fiscal Controls/Audits

The DCA and its related authorities administer hundreds of millions of dollars in grants and subsidies to municipalities, nonprofit organizations and businesses. There is a critical need for the DCA to develop a disciplined program of internal controls, particularly in its essential service areas, to ensure that funds are properly used, that they achieve their intended results and that non-compliant organizations are censured. This report recommends both improvements in internal DCA controls as well as the development and incorporation of Sarbanes Oxley (“SOX”)-like corporate responsibility best practices at the recipient level.

Technology & Utilization

DCA’s technology platforms (hardware and software) are deficient in essential areas. As a consequence, certain services are not provided at a high quality level (or at all in some cases) and personnel requirements are higher than they would be were the technology platforms adequate. This report recommends a number of investments in technology for consideration.

Organizational Structure/Consolidation

Some divisions appear to be redundant with other government entities; have been allowed to atrophy without negative consequence; can be more effective in other state agencies; or do not directly

¹ The affiliated entities reviewed for the purposes of this report are: the HMFA, NJRA, UEZA, NJMC and LUARCC.

serve the core mission of the organization. The organization would profit from a renewed clarity of purpose and an operational focus consistent with its fundamental mission to serve as the liaison between the state and local governments. This report identifies a number of opportunities (involving the majority of the organizational units reviewed) where transfer, consolidation, or elimination (in whole or part) should be considered.

Staffing

DCA's core services require personnel and leadership with specialized knowledge across a broad array of disciplines (finance, engineering, development, code enforcement and others). There is an understaffing issue across DCA that has implications for the quality of its core services, notably within the Divisions of Codes & Standards, Fire Safety, Local Government Services ("DLGS"), and at the Urban Enterprise Zone Authority ("UEZA"). Further exacerbating this situation has been a significant increase in statutory and regulatory obligations to be carried out by the DCA (many not core to its mission) without a commensurate increase in resources. Negative consequences in the form of backlogs, delinquencies and the suspension of services flow from the understaffing in these areas. For DLGS and UEZA (the two significant fiscal oversight bodies for municipal aid) the understaffing occurs in terms of absolute members as well as in the absence of critical skill sets (such as auditors). This has created serious fiscal accountability issues. This report identifies opportunities where reallocation, outsourcing and upgrading of personnel, including leadership, should be considered.

Division of Local Government Services ("DLGS")

The DLGS's 40 employees'² core responsibility is to work with local governments and authorities to ensure their financial integrity and solvency, and to support their efforts to comply with applicable laws and regulations. DLGS is responsible for providing technical assistance to strengthen local government and authorities' fiscal, managerial and functioning systems. It also oversees and is accountable for the delivery of billions of dollars in municipal aid, special distressed aid to cities and

² Since 2002, DLGS staff has been reduced from 66 to 40.

grants-in-aid for programs and shared services. ***A lack of fiscal and operational accountability, inadequate technology, and reduced levels of staffing currently compromise DLGS's basic mission.***

Staff reductions and inadequate technology have compromised the DLGS's ability to review local budget documents in a timely fashion. Five hundred and sixty-six municipal, 21 county, and various authority and fire district budgets are all submitted to DLGS on paper. The technology has been described as "painfully inadequate". Budgets could be reviewed more quickly and, if needed, more frequently with electronic reporting. Additional software would provide greater transparency and allow for better information on government finance and operations, while creating a valuable database for local governments, taxpayers and nonprofits.

With the recommendation of the Local Finance Board, the legislature has approved hundreds of millions of dollars to distressed cities with little in furtherance of fiscal accountability or operational improvements at the local level to move toward self-sustainability. The absence of DLGS oversight or local corrective action steps inevitably promotes a culture of dependency. In contrast, there is a lack of flexibility for compliant, well-managed municipalities to be creative and innovative in their finance practices.

DLGS is also responsible for the administration of many grants-in-aid programs designed to encourage shared services. The support for shared services at the state level, however, is largely administrative and "top down" in approach while real gains in shared services are "bubbling up" voluntarily from municipalities. Given the correct tools, particularly in this economy, we believe that the "bubbling up" approach to shared services solutions will continue to grow. There is, however, no current repository or collection bank for these best practices to be shared with other municipalities.

Stakeholders believe the best approach continues to be utilizing state resources to provide a catalyst for voluntary arrangements rather than top down mandates. It is imperative, however, to remove impediments that prevent towns from entering into these voluntary agreements. The civil service rules are a major impediment. It is difficult, if not impossible, for civil service and non-civil service towns to

enter into significant shared service agreements. If impediments such as this are adequately addressed, the utilization of shared services should proceed at a faster pace.

Improve Fiscal and Operational Accountability

While DLGS has multiple functions, the most significant is its oversight of local budgets. The DLGS, however, faces significant problems in meeting this statutory obligation. The DGLS itself recommends a comprehensive review of its statutory obligations and we agree with its recommendation.³ Additionally, consideration should be given to the transfer of local budget oversight operations to Treasury because it has expertise in these areas and is the source of state funds flowing to municipalities.⁴

In addition, we recommend the new administration define and implement a vigorous auditing, and compliance program with enforcement controls. Utilization of operational audits and performance measurements to evaluate special aid and grants-in-aid should be considered; additional oversight is needed not only in monitoring the financial status and compliance of grants, but also to ensure the intended purpose and goals of the grants are being met. Resources should be realigned to add internal auditors, with appropriate skill sets, to provide necessary controls and consider outsourcing of projects to auditing firms when possible. Ethics training and a SOX-like certification by all government and nonprofit agencies receiving state dollars should be required (See Appendix I).⁵ The defined role and performance of the Local Finance Board also needs further evaluation.

Provide Tools to Promote Shared Services

We recommend that current state funding for shared service programs be targeted to those practices that have been proven to work. Further, well-managed, compliant municipalities should be given greater flexibility to achieve innovations, particularly when they move ahead with shared services or consolidation. Consideration should be given to an amnesty period on cap levy restrictions while communities grow into new arrangements without fear of failure due to cap restrictions. Other fiscal incentives and rewards could be investigated for those municipalities aggressively pursuing consolidated

³ There are issues generated by an ever-increasing number of statutory mandates being applied to the immense volume of budgets requiring review as well as the frequency of review.

⁴ A common complaint from municipalities is the difficulty preparing local budgets because they must await Treasury determinations about state aid; the delay and/or modifications from Treasury causes delay and uncertainty in completing local budgets.

⁵ The potential for the imposition of financial or other unfunded obligations upon municipalities must be kept in mind.

services. Enforcement controls to make non-compliant distressed governments move to sharing and consolidation should be strengthened. A public institution or nonprofit agency should be identified to become a repository of best-shared service and consolidation practices.⁶ Communication and education should be improved including the development of a “tool box” for municipalities to gain insight into the expectations, barriers, civil service issues, and consolidation contracts from municipalities that have learned from experience. In addition, the disincentives in the cap levy law, which prevent municipalities from budget cutting in any year, for fear of having new, lower spending limits imposed should be repealed.

Technology Must Be Improved

The development of electronically filed and user-friendly budgets for local units will ultimately help save taxpayer dollars and improve public access. In addition, the improvement or redesign of the SAGE software system utilized for grant-related applications is also highly recommended.

Division of Codes & Standards

The Division of Codes & Standard’s 525 employees (some temporary) are responsible for the establishment and enforcement of building codes, most of which are generally adopted by reference from national codes.⁷ It is responsible for plan review and inspection of state facilities, hospitals, casinos, nursing homes, power plants, amusements, and other large or complex structures where local code officials may not have adequate resources, authority or licenses. The Division also enforces building codes in 37 municipalities that do not have local code officials and provides elevator inspections to 457 municipalities.

Backlogs of inspections for equipment and facilities currently exist as follows: elevators (585); rooming houses (311); boarding homes (110); residential health care facilities (67); emergency shelters for the homeless (61). Further, pursuant to the Hotel and Multiple Dwelling Unit Law, hotels and multi-family dwellings must be inspected once every five years. There are approximately 206,000 units due for

⁶ For example, the Division of Fire Safety could expand its role to provide unbiased studies of fire consolidations.

⁷ Primarily the Uniform Construction Code implemented under N.J.A.C. 5:33.

inspection this year alone. The Division, however, can currently inspect only approximately 14,500 units per month.

Codes and Standards has incurred a loss of over \$7 million this year and is being subsidized by the Division of Fire Safety which has netted \$5 million, leaving a \$2 million loss when both Divisions were designed to be self-sustaining. In order for the Division to perform its statutory obligations adequately, efficiently and profitably, changes in the way it does business must occur.

Technology Improvements Required

The Division relies heavily on antiquated, labor-intensive, paper-based systems requiring the physical delivery of much of the work its inspectors conduct in the field.⁸ The Division has studied the use of technology for its Construction Code System, but is currently a standalone system and optimally should be moved to shared sever-based network. The software should be completed and it is suggested that it be done in modules reflecting the order of need. Module 1 would include field-based reporting from the inspection site by personal data assistant or notebook devices that automatically update permit progress and uniformly automates the issuance of approvals. Ideally, the improvement of this system will carry over to the municipalities allowing them to expedite their inspections and reporting in real-time and directly to the agency. This will result in significant savings for the agency and for each municipality when implemented. Module 2 would allow for E-Permitting and could be incorporated statewide even in local units.

Staffing Modifications Should Be Considered

Reductions in the Division's workforce may be possible if labor-intensive processes are eliminated through technological improvements. The Division has engaged 25 temporary professionals, 13 being used for elevator inspections. Elevator inspections are a specialty discipline and the Division should consider hiring full-time inspectors, as this is a core safety responsibility of the Division. The engagement of temporary professionals and temporary clerical employees on an as-needed basis best serves the Division because they can match the changes in the construction market. Additional

⁸ Pursuant to statute, the enforcement of code violations must be notice by certified mail at a cost of approximately \$120,000 per year.

opportunities for outsourcing should also be pursued. Morale, work consistency and production have been affected by the freezing of promotions. Low level employees often perform the work of retired associates, who are known to have had a higher scale, but the current employees cannot get commensurate pay due to the pay freeze which will expire some time in 2011. The new administration should give careful consideration to lifting the freeze on promotion (the freeze equates to approximately \$1,000 each per year at the clerical level).

Regulatory Review Required

A significant amount of Division resources are allocated to inspections, however, it appears that they may be duplicative of similar inspections for insurance purposes, for Certificates of Occupancy and may be performed too frequently. Eliminating duplicative inspections will help free the Division's inspectors to address the current backlog of inspections. Very serious consideration should also be made to follow one set of standards and codes as outlined by the UCC that could eliminate the need for state codes and standards. This review may take time, but will streamline the inspection process because it will eliminate some of the statutory requirements that are unnecessarily onerous and/or duplicative. Also, pending code revisions should be adopted (update of UCC), except for those requiring the installation of sprinklers in residential dwelling units that would have a detrimental economic impact on an already bearish housing market.⁹

Privatization of Inspections of Multiple Dwelling Units Should Be Considered

Inspections of multiple dwelling units should be considered for privatization to licensed entities with the cost and responsibility for those inspections to be borne by the owners of the properties inspected. A complete analysis (cost, benefit, safety) of the impact should be conducted to determine the optimal application of resources.

Conduct Independent Audit of Operations and Finances

⁹ See Division rule proposal regarding installation of sprinklers in one and two-family dwellings by January 1, 2012 at 41 N.J.R. 3140(a) (September 8, 2009). Comments to this proposal were accepted until November 7, 2009. Its adoption is now pending a decision by the Commissioner.

It is strongly recommended that an independent operational audit be conducted focusing on safety, staffing, technology and infrastructure, as well as a financial audit.

Division of Fire Safety

The Division of Fire Safety's 90 employees¹⁰ are responsible for the establishment and enforcement of the Uniform Fire Code, most of which is generally adopted by reference from national codes.¹¹ Among many duties, it administers training and certification programs for fire service instructors and inspectors, and enforces the fire codes for approximately 100 municipalities that do not have local enforcement agencies.

The Division of Fire Safety is well funded and self-sustaining.¹² In fact, the Division has a history of surpluses, \$5 million of which was utilized to subsidize the Division of Codes and Standards this year. The Division maintains a fleet of 60 vehicles, of which approximately half are designated as first responder vehicles.¹³

Technology Improvements Required

Similar to the Division of Codes & Standards, the Division of Fire Safety is lacking essential technology that has perpetuated inefficient labor-intensive paper-based systems. The Division has studied the use of new technology in conjunction with the Division of Codes and Standards (both of which should be moved to a shared server-based network). The ability of these Divisions to share information derived from inspections could be both cost effective and efficient, particularly if integrated with systems administered by local enforcement agencies.

Maintain Funds for Intended Purposes

The Division has generated surplus revenue that has been applied to support other entities in state government. Left alone, this Division is self-sustaining and could achieve better results if its surpluses were used to first address the needs of the Division itself. In addition to the need for technological

¹⁰ The Division is currently authorized to have a staffing level of 135. There is a freeze on all promotions and staffing levels caused by cuts and/or retirements have not been filled from years 2007, 2008 or 2009, leaving approximately 36 positions vacant.

¹¹ Primarily the International Fire Code implemented under N.J.A.C. 5:70.

¹² The Division levies 144 fees on 68,000 life hazards throughout the state generating revenues of \$26.8M annually, 65% of which is remitted to approximately 400 local municipalities that perform inspections and enforcement of the Uniform Fire Code locally.

¹³ It was reported to the subcommittee that many of these first responder vehicles have excessive mileage (150,000+) and should be replaced.

improvements, additional Compliance Officers in the Division's Regulatory Affairs Unit would likely generate incremental revenue that could be utilized to support the Division's training functions. This could provide the resources needed to hire additional inspectors to address newly imposed statutory and regulatory mandates, and foster public education and awareness, which have a direct correlation to reductions in fire-related deaths and injuries. Currently, the Division does not prepare its own budget, which makes the optimal allocation of funds more difficult.

Independent Audit of Operations and Finances

It is highly recommend that an independent operational audit be conducted focusing on staffing, safety, technology and infrastructure, as well as a financial audit.

Division of Housing & Community Resources

The Division of Housing and Community Resources has 326 employees and its primary goal is to help create safe, affordable housing, and implement programs to prevent homelessness. The Division has two primary responsibilities under its charge: (1) production and preservation of affordable housing (as well as rental assistance); and (2) contract administration--primarily of federally funded assistance programs. State funding for the housing production and rental assistance programs is generated through the Affordable Housing Trust Fund ("Balanced Housing Fund" or "Fund").

Unfortunately, the desired ends of the programs are not being optimally achieved; some have become inefficient and/or ineffective and take away from the Division's overall effectiveness. Moreover, in the current economic climate, there is a decreasing number of projects in the production pipeline because: (1) the decrease in the construction and real estate markets have decreased contributions to the Balanced Housing Fund; and (2) current real estate market conditions are making the construction of projects eligible for Balanced Housing Funds less desirable. There has been a decrease in funds applied to the creation and rehabilitation of homes while the use of rental subsidies has increased. The Division estimates the projected receipts in FY2010 will be approximately \$55 million and further indicate that this amount will be insufficient to meet the demand on the Fund.

The Neighborhood Revitalization Tax Credit (“NRTC”) Program, however, appears to be achieving its intended goal and has the potential for continued growth. The program generates up to \$20 million in new investments to certain eligible communities and its continued growth, and expansion, could enhance revitalization throughout the state.

As for the contract administration programs, they can be broken down into two areas - those administering distribution of federal dollars (the majority) and those funneling state monies. The state-financed administration programs include the Lead Hazard Control Assistance Fund (“LHCAF”) that identifies lead hazards and works to reduce and eliminate such hazards, including residence relocation; the Low Income Home Energy Assistance Program (“LIHEAP”) that pays for utility bills for low income families; and the Weatherization Assistance Program that offers weatherization assistance to eligible individuals. These programs should be reviewed to ensure the accountability of entities granted money to perform work (*e.g.*, the Weatherization program) and the eligibility of those receiving assistive monies.⁵

Enhance Division Through Merger With HMFA

It is recommended that the Division be merged into the New Jersey Housing and Mortgage Finance Agency (“HMFA”). The Division’s housing production programs serve a similar function as HMFA (both providing funding for production and/or rehabilitation of housing). Not only would this provide increased efficiencies and productivity, it would promote and maximize the ability of both entities to accomplish their goals and maximize their collective return on available dollars. Moreover, the consolidation of housing related matters is a necessary first step in coordinating housing programs and policies to achieve a consistent and productive outcome. Diminishing Balanced Housing funding hampers the Division’s productivity and the current state of the credit markets has placed some limits on the HMFA. Those two realities are not likely to change in the immediate future and this merger could provide both a short-term enhancement and a stable platform for future growth. It is predictable that the HMFA will be the lead lender in New Jersey as it becomes difficult for the private sector to provide credit for affordable housing projects.

⁵ There is a current auditing system in place to try and root out fraud, however, this is an area for potential improvement, possibly by outsourcing. Any contract for more than \$29,500 has to go through the Treasury Department and that route may take an extended period of time.

The Low Income Housing Tax Credit program, which is an equity source critical to multifamily rental housing, presents challenges as well as it continues to lose value in today's market place. Due to the decline in tax credit equity, HMFA will need an increased subsidy source such as Balanced Housing funds. Therefore, merging the Balance Housing Fund under one roof will provide a more efficient structure in providing a valued subsidy source in order to leverage HMFA financing for both owner occupied and rental housing projects.⁶ In addition, the cross marketing of opportunities through the consolidated programs could be significant. The Division's programs could be prioritized and HMFA could help promote them to ensure the desired accomplishment. This consolidated unit would make it more efficient and less costly for municipalities and those creating homes; that necessarily benefits the ultimate target (purchaser/tenant of affordable housing) with resulting increased number of available units at a decreased cost. Finally, the HMFA should also easily be able to administer the NRTC program and transferring oversight should enhance the program.

Move Contract Administration

The Division's contract administration programs could be moved to a new subsidiary corporation of HMFA. HMFA already has a contractor administrator division for USHUD Section 8 housing and the transfer of similar programs from the Division, and consolidation in a new subsidiary corporation, could follow. HMFA has successfully carried out both production and contract administration functions and formed a model that should be promoted⁷. Finally, a third Department under the contract administration division within HMFA would be created to administer the rental assistance programs.

Should the transfer of the entire Division not be viable, a second option is to split the Division between its production grant programs and its contract administration programs. Under this model the production-based programs would be brought into HMFA with the contract administration programs to remain within the DCA.

⁶The money allocated to OHA could be reduced to \$1 million to be used to sponsor nonprofit entities' attendance at Harvard program run by Government Sponsored Entities (e.g., Fannie Mae and Freddie Mac), or other similar programs, to educate them on becoming developers. The nonprofits could then be guided toward a partnership with a private entity to assist them in moving toward the current goal of OHA. The current program is not achieving the results and this model would help achieve the desired goal; otherwise OHA should be eliminated.

⁷HMFA's contract administration department oversees 293 HUD based contract administration projects and has been issued no deficiencies by the Federal agency.

Improve Coordination of All Housing Programs and Policies

No matter which course is pursued, there must be greater coordination of housing policies and functions (*e.g.*, the Division, HMFA, COAH, etc.), including those between public and private partners.

Review Other “Well-Intentioned” Programs

The state has many well-intentioned programs⁸, but some of these programs are unsustainable in light of the current economic environment. While significant hardship cases should have some assistance for them to gain a foothold and advance upon their own, programs that promote perpetual dependence are counterproductive.

Eliminate New Jersey Office of Recreation

Created almost 60 years ago, the Office is located in the Division and its purpose is to promote and encourage the expansion and development of recreational programs on a statewide and local basis and to distribute information to governmental and other agencies engaged in fostering recreational programs. The Office’s primary purpose is more appropriately handled by local governments. In fact, counties and most municipalities have blossoming recreational programs and foster recreation within their localities.

New Jersey Housing & Mortgage Finance Agency (“HMFA”)

The HMFA is established in, but not of, the DCA and is constituted as a body politic and corporate and an instrumentality of the State of New Jersey, exercising public and essential governmental functions. The HMFA’s primary source of funding is from the sale of tax-exempt and taxable bonds—not the state treasury. Under the Single-Family Division, the HMFA is responsible for providing funds to finance the purchase or improvements of owner-occupied one-to-four family residences in the state. The HMFA’s programs, including its role as the authorized housing tax credit agency for the state, are: (a) designed to increase the opportunities for affordable housing for low, moderate and middle-income residents, including the homeless and other special needs populations; (b) to work with the private sector in meeting the HMFA’s mission; (c) to assist in urban revitalization; and (d) to develop innovative and

⁸ Issues regarding housing assistance for the disabled and special needs must also be addressed, and there is no suggestion herein to deny such assistance.

flexible financing vehicles which will be responsive to the granting of low-interest mortgages financed by the sale of housing revenue bonds. The HMFA also serves as a conduit for various federal and state subsidies, grants and demonstration funds.

The HMFA, however, with a rich history as a financial institution and as an independent agency of the state has been challenged in recent years and the subcommittee feels that the following recommendations will assist in improving its performance.

Highest Priority Recommendations

- **Transfer housing production and funding functions of the Division of Housing and Community Resources to HMFA.** Please note the comments under the Division of Housing and Community Resources section that recommends all such functions be merged.
- **The HMFA is a financial institution, and therefore, requires an Executive Director with a strong banking, financial and operational skill set.**

Short Term Recommendations

- **Hire and fill the vacant position of Chief Financial Officer immediately.** This position was vacated by a 30-year employee at HMFA on December 18, 2009. There are pressing issues that must have the attention of the CFO.
- **Investigate in depth potential serious short-term issues.** Such critical activities such as special needs trust funding, single family and multifamily projects at risk, preservation of affordable units and long term available funding for HMFA programs and products are of critical concern and should be reviewed immediately.
- **Continue to communicate opposition to the Prevailing Wage Bill.** The current prevailing wage legislation (S3096/A4291), if passed, will increase the cost of housing, estimated to be an additional 30%, which will undermine HMFA's ability to fund affordable housing.
- **Re-establish the independence of the HMFA from DCA.** This change in direction is necessary to fulfill the HMFA's core mission of financing affordable housing. There is also a serious concern that if HMFA is viewed as another state department, rather than a state agency or "bank" the attractiveness of its bonds will diminish.

Longer Term Recommendations

- **Study all programs within HMFA to determine if they belong in the "Banking" function of the Agency. Consolidate externally, eliminate or consider outsourcing those functions unnecessary or determined not to help meet its core mission.** Many functions and programs that have been made the responsibility of HMFA have no relation to the "Banking" role of the agency. These functions and programs detract from its core mission and take staff and other resources from more important responsibilities.

- **Develop strategies and programs to improve HMFA management and staff morale.** It was communicated, both internally by long-time employees and externally, that the HMFA management and staff's morale is low.
- **Discontinue the practice of diverting HMFA funds for other state budget purposes.** Over the last eight years, Treasury has required that HMFA provide \$62 million in funds for the state budget, which could have been used to fund various programs, projects and operations of the HMFA. In addition, since rating agencies look to excess funds when they are auditing the HMFA to provide a bond rating, a continuation of this practice will have a potentially detrimental impact on the bond rating and result in higher financing costs. Further, it should be noted that a diversion of funds takes on many forms; for example, HMFA currently funds 13 positions in other departments.
- **Protect against single-family financial risk through the usage of cash reserves.** Due to current market conditions, both bond and pool insurance is not currently available. Regardless of the HMFA putting 85% of its single-family mortgages into FHA insurance, it still has exposure on the 15% of non-FHA mortgages it has financed. If it experiences losses, it would hit the HMFA's General Obligation. As a matter of prudence, HMFA should set-aside cash reserves to protect against potential defaults on non-FHA single-family mortgages.
- **Increase participation in leveraging available funding through private and public partnerships.** In these times of limited available funding for affordable housing programs, it is important that the HMFA leverage private and public entities and their funding resources. Simply put, the HMFA needs to do more with less by working with banks, nonprofits and other local, county, state and federal government funding sources.
- **Coordinate efforts in the areas of inspections for tax credits, property management and HUD's REACT Programs.** Various stakeholders expressed concern about the number of inspections that are made for each program on the same development. The HMFA's individual divisions handle several of these inspections. Better coordination of these inspections, perhaps limiting it to just one all inclusive inspection, will increase productivity, be more cost effective and less time consuming for those financing with the HMFA.
- **Reconsolidate the Policy, Legislative Affairs, Marketing and Communications units within HMFA from DCA.** Recently, these units and their associated functions were transferred to DCA. This has resulted in inefficiencies and the inability to manage the affordable housing responsibilities of the HMFA. By reinstating these units at the HMFA all of these functions can be under one umbrella that will allow it to improve on meeting the overall goal of managing housing policy and programs for the state.
- **Reinvigorate the Management Task Force.** The purpose of the task force is to get the HMFA, owners and project managers together to improve existing communications and relationships to help expedite its mutual goals. Ultimately the developments and the residents that reside there benefit from this interaction. It is imperative that this dialogue be re-established.

Government Records Council ("GRC")

The GRC was created in order to promote the principle of government openness and transparency under the Open Public Records Act ("OPRA") and former Right-To-Know Law. Proper implementation

of the GRC is essential to promoting transparency and ethics in government. The GRC, however, can and must carry out its duties in such a way that balances the right of the public to the privacy of their personal information, and the taxpayers' right to efficiency in government.

- **Immediately fill the vacant public seats on the GRC.**
- **Adopt recommendations of the Privacy Study Commission concerning redaction of personal information including phone numbers, home addresses, emails, and exemption from access for the commercial use of personal information.** This will not only address such concerns, but also provide less ambiguity in the application of the law, which will provide increased efficiency for records custodians to comply with the law.
- **Administrative and legislative changes are needed to expand the term “actual costs” to include the cost of labor and actual costs of retrieval and reproduction.** Current cost estimates fail to account for the time and other resources spent by municipal clerks to fulfill requests. This creates a burden to taxpayers that far outweigh any direct benefits. Legislation should encourage the increased use of technology as part of a broader government efficiency initiative in order to facilitate easy and inexpensive access to records online.
- **The GRC should create a more user-friendly website that includes more updates.**

Local Unit Alignment Reorganization and Consolidation Commission (“LUARCC”)

LUARCC was established in 2007 to study and report on the structure and functions of county and municipal government. It engaged the School of Public Affairs and Administration (“SPAA”) at Rutgers-Newark to: (a) survey available research regarding the optimal size of municipalities and service delivery areas; (b) define what constitutes efficiency in service delivery; and (c) ascertain the costs and benefits of consolidation. LUARCC has also undertaken a detailed examination of municipal service delivery starting with public health, emergency communications, and administration of justice given the fundamental role the state plays in overseeing the delivery of these services. *At the conclusion of its 2010 study, LUARCC should be eliminated, and its recommendations should become part of the public institution “repository” of the best shared service and consolidation practices. This will be another tool for local governments to foster change.*

New Jersey Redevelopment Authority (“NJRA”)

The NJRA was created to assist in the revitalization of New Jersey's distressed urban areas. It currently provides financial and technical support to 68 urban aid municipalities through the fostering of

functional public-private partnerships. In 2008, its operating expenses were approximately \$2.8 million and it maintains a 15 person staff, all of which are members of the New Jersey Public Employees' Retirement System ("PERS"). The NJRA's uncompensated board consists of 21 members (10 specified ex-officio cabinet members, 7 specified appointees of the Governor, 2 appointees of the Senate President and 2 appointees of the Assembly Speaker). The Commissioner of the DCA serves as the Chair of the NJRA board. The NJRA maintains its own office space, computer network, auditors, financial and other consultants. The following recommendations should be considered.

Transfer Assets to NJEDA, and Merge NJRA Staff With UEZA

Within the last eight years, the state has undertaken the consolidation of economic development finance programs under the NJEDA as the state's "bank for business." A centralized banking function that provides the foundation to achieve the state's economic development mission is critical in several respects: In this extremely challenging economic period, it provides a path to aggregate resources to assist businesses in more meaningful transactions; improves the creditworthiness of individual deals by eliminating multiple underwritings by different state entities; and strengthens the NJEDA balance sheet to attract the banking and investor community for leveraged lending and equity opportunities. *We recommend this continue with a transfer of the NJRA assets to the NJEDA.* The NJEDA has the existing infrastructure to lend and service loans and currently assists the same municipal, real estate development and business customer base that the NJRA serves.

The NJRA can continue to perform its function within the NJEDA. This move would increase its ability to finance larger and a greater number of projects. At the time of the NJRA's formation, it may have been the appropriate body to provide financing for urban community redevelopment; however, in 2010, the NJEDA clearly commands this position with respect to all redevelopment projects in the state that primarily take place within the 68 urban aid municipalities currently qualifying for the utilization of the NJRA's programs. Simply put, the NJEDA is a better home for the functions of the NJRA, which would free it of its current limitations to effectively promote community-based urban redevelopment.

NJRA staff, while limited in size, has been active in urban enterprise zones and has provided assistance to municipal officials and community development staff along the lines of neighborhood planning activities and deal structuring. Often local community development staffs perform multiple functions, including that of Zone Coordinators for the UEZA. The assistance that NJRA and State UEZA staffs offer to municipalities is of an overlapping nature, and therefore, *we recommend their staffs should be merged.*

New Jersey Urban Enterprise Zone Authority (“UEZA”)

New Jersey’s UEZ program was created as a key economic development strategy aimed at job creation for local residents in ten targeted NJ urban areas that faced formidable obstacles to revitalization and business growth. Over time, the program has grown to over 30 cities. Currently, the UEZA is inadequately staffed and technologically challenged at a time when the number of projects it administers has increased substantially (150 in 2004 to over 200 in 2008). As a consequence, the organization (and its Board) is significantly challenged in meeting and applying necessary fiscal controls and does not have the resources to plan key economic development.

As the program has evolved over time it has reduced its focus on economic development projects and applied assistance funds increasingly to the provision of municipal services. Of the \$121 million of first generation zone expenditures (funds derived from sales tax receipts) for the period from June 2008 to June 2009, approximately \$68 million was applied to municipal services (fire, police, sanitation, emergency and infrastructure capital construction projects. The remainder (approximately \$53 million) was applied to economic development projects including \$13 million for marketing programs.

Conduct Comprehensive Analysis of the Mission, Direction and Composition

A comprehensive objective analysis by a group comprised of experts and professionals drawn from multiple disciplines is required to review the program’s history, effectiveness, and organizational and operating zone structures. We cannot understate the importance of this first step in addressing the deficiencies in this highly visible and politicized program. The review should explore the current use of the program for municipal services and weigh options that may entail new formulas for state municipal

aid; analyze the economic development functions provided for by the program; determine the success of the program investments dedicated to this mission; and, identify synergies, efficiencies, consolidation and streamlining opportunities with other state agencies performing like services. Impartial analysis and observations may suggest reformation of the existing program, or in the extreme, the distribution of functional areas to other areas of state government where the delivery of aid and services to municipalities and businesses would be more efficient.

Interim Recommendation

In the interim, pending completion of this review, funding should be applied only to existing projects. Funding for new projects should be subject to a rigid approval process.

Office of Smart Growth (“OSG”)/State Planning Commission (“SPC”)

The OSG and SPC were created to streamline the planning and development process in the state. As envisioned, it was to serve as the focal point at which various state agencies would coordinate to advance state planning strategies. The planning strategies would then engender economic growth opportunities throughout the state in a streamlined and predictable manner.

The OSG and SPC, however, have not, nor can they, achieve their intended purposes for several reasons. First, the planning functions and controls over vast areas of land in the state are governed by other planning agencies and regulatory schemes (Highlands, Pinelands, Meadowlands, Fort Monmouth, CAFRA, etc.). Second, cooperation with the OSG is voluntary and there is no reason or incentive for municipalities to work within its guidelines or planning strategies. Third, OSG and SPC have no enforcement powers. Fourth, in light of the foregoing, OSG has become a mere advisory office. Fifth, OSG and SPC’s interaction with other state agencies that have enforcement powers, most notable the NJDEP, further frustrates their purposes because the functions of OSG and SPC are almost always duplicated by other agencies such as NJDEP, COAH and NJDOT.

- Abolish the OSG and SPC; or
- Reposition OSG (with or without the SPC) as a “One-Stop” shop (the “Interagency Office”) in the Department of State where both the private and public sectors can utilize the office for purposes of carrying out future development of the State. The focus of the office would be to

serve as a liaison with all state agencies involved in the oversight or regulation of development projects statewide.

New Jersey Historic Trust (“the Trust”)

The Trust is a statutorily created body charged with the preservation of historic resources across the state. It has a comparatively small staff of five, all of whom are experienced professionals in historic preservation. The Trust is currently under the organization of the DCA. Related departments include the Historic Preservation Office (“HPO”) under the NJDEP; the New Jersey Historical Commission and State Museum, under the Department of State; and Historic Sites and Villages under the Department of Parks and Forestry.

This disjointed structure for allied departments should be combined into a single “Office of Historic Resources”, which could reside in the Department of State. In addition, a permanent source of funding should be secured for the Trust. Currently, the Trust is funded by the Garden State Historic Preservation Trust Fund, which is set to expire in 2011. Public and private partnerships are avenues that should be explored to diminish reliance on state appropriations and increase the ability of the agency to meet its goals.

New Jersey Meadowlands Commission (“NJMC”)

The NJMC is a regulatory agency for the 30.4-square mile Meadowlands District, composed of parts of 14 municipalities in Bergen and Hudson counties. The NJMC has a total of 124 employees, including 119 full-time and 5 part-time workers. The NJMC 2008 Annual Audit budget can be viewed online at (www.njmeadowlands.gov/audit/intro.html). The NJMC is a self-standing and self-funded. Substantially all of its employees, however, participate in state’s PERS program creating future economic obligations on the state. Suspension or prohibiting future contributions to the PERS program will dramatically minimize the state’s future liabilities. The new administration should engage the NJMC and pay particular attention to its efforts in relation to the redevelopment of the former EnCap site, which is undergoing remediation under a settlement with AIG.

Division on Women (“DOW”)

The DOW was established by in 1974 as an advocacy agency for the rights and opportunities of all women. It provides leadership in the formation of public policy and in the development, co-ordination and evaluation of programs and services for women. There is an Executive Director and eleven staff members. The majority of DOW programs focus on empowering women who have been victims of domestic violence, abuse, rape, and/or need skills to transition into the labor market. The DOW funds domestic violence and rape care hotlines in 21 counties 24 hours a day as well as 14 Centers for Displaced Homemakers.

DOW is also responsible for the NJ Women's Micro business Credit Program, which is geared toward low-income women and which may be better suited to reside within the NJEDA. The DOW also oversees three Urban Women's Job Training Centers to improve the job readiness skills of impoverished single mothers. Furthermore, DOW oversees three (legislatively enabled) Hispanic Women's Demonstration Resource Centers, which provide outreach to Hispanic women, particularly single women who are head of their households.

The DOW should be merged with the Center for Hispanic Policy and Research Development and located in a more unified and robust diversity office within the Department of State. Alternately, the DOW could be moved to the Department of Children and Families. A cost benefit analysis should inform this determination, but in either case, cost savings would be achieved by unifying the Children and Families funded domestic violence programs (at DHS) with the DOW funded rape care programs. Additional cost savings could be achieved by consolidating the 45 state funded 24-hour hotlines into three or four regional centers. A review of the Division's Advisory Councils and Commissions is needed. Some boards meet regularly while others do not.

Center for Hispanic Policy Research & Development (“CHPRD”)

The CHPRD was established by law in 1975 with the mission of empowering the Latino community through the process of policy development and direct social services. The CHPRD has grown from a \$300,000 budget in 1975 to \$4.5M in 2008. It has an Executive Director and three staff members.

The CHPRD administers grants that are awarded to nonprofit community based organizations whose primary focus is the needs of the Hispanic community in the area of general social services, Hispanic work readiness, capacity building (helps nonprofit organizations with technology, financial management, etc.) and domestic violence. Additionally, it partners with the New Jersey Division of Highway Traffic Safety to administer a federally funded (\$285k/yr) program to increase the awareness of traffic safety principles and to change the behavior of motorists, bicyclists and pedestrians. Furthermore, CHPRD provides leadership and career opportunities to Hispanic college students through a summer internship program with private and public entities. Over 500 college students have participated since its inception in 1988. The CHPRD oversees the administration of \$4 million in grants. It is recommended that:

- While a self-monitoring instrument is used to measure compliance, *improvements are needed in the area of performance measurements and fiscal accountability* in order to ensure that the funds are properly used.
- In addition, there is some overlap with DOW in the area of domestic violence and the DOW administration of the Hispanic Women’s Resource Center. *There could be some cost savings in their merger.*
- This organization should be *merged into a more unified and robust diversity office within the Department of State.*

Council on Affordable Housing (“COAH”)

COAH was created by the Fair Housing Act of 1985 (“FHA”)¹⁴ to encourage voluntary compliance with the Mt. Laurel I and II obligations. The FHA created COAH with the function to: (a) determine housing regions of the State; (b) estimate the present and prospective need for low and moderate income housing; (c) adopt criteria and guidelines for present and prospective fair share of the

¹⁴ N.J.S.A. 52:27D-301 et seq.

housing need; and (d) determine population projections and place a limit upon the aggregate number of units which may be allocated to a municipality.

Under the FHA, COAH adopted substantive rules for each housing cycle which outlined how a municipality's fair share obligation is calculated and the manner in which each municipality must address it during that housing cycle. Upon compliance with the regulations and approval by COAH of its affordable housing plan, a municipality receives its Substantive Certification, which shields that municipality from builder's remedy lawsuits. COAH's Third Round regulations represented a significant departure from the prior rounds and proved problematic.¹⁵ In 2008, the legislature passed amendments to the FHA (known as "A500") that further complicated compliance issues.¹⁶

Approximately 250 municipalities have submitted housing plans to COAH for Third Round certification. Municipalities in the Highlands Region were given an extension of time to file through June 8, 2010¹⁷ and approximately 50 more towns intend to submit plans on or before that date. The Executive Director indicated to the subcommittee that over 50 municipalities have had their plans certified by COAH, and estimates that at the current pace, approximately 100 municipalities will be certified within by the end of 90 days into the new administration, and approximately 130 municipalities by the end of the first 6 months of the new administration.

As a division, COAH consists of approximately 25 individuals including planners, attorneys and administrative staff. According to the Executive Director, of the twelve seats on COAH, at the current time five seats are vacant and there are several holdover appointments. COAH's functions include generating regulations, reviewing and certifying municipalities fair share plans, monitoring of deed restricted units and monitoring of affordable housing trust funds.¹⁸

¹⁵ The Third Round regulations used a "growth share" approach to determine a municipality's prospective affordable housing obligation, which ultimately required calculating municipal affordable housing obligations through 2018 at a ratio of one (1) affordable unit for every four (4) market rate units and one affordable unit for every 16 jobs generated by non-residential development. As a result, many municipal affordable housing obligations increased significantly.

¹⁶ A500 among other things: (a) imposed a Statewide mandatory 2.5% development fee charged on the equalized assessed value of the proposed development; and (b) eliminated the use of regional contribution agreements ("RCAs"), a mechanism for municipalities to transfer some of their affordable housing obligations.

¹⁷ Pursuant to a Memorandum of Understanding directed by Governor Corzine Executive Order No. 114.

¹⁸ Currently estimated to be \$277M among all the local Trust Funds.

Long Term Recommendations

Since the New Jersey Supreme Court based the Mt. Laurel decisions on the “general welfare” clause of the Constitution, a constitutional amendment could be made, but would have to be specific so as to either: (a) define what a municipality’s obligation is; or (b) affirmatively state that a municipality does not have the obligation. Any constitutional amendment to that effect would eliminate the need for COAH. In order to pass a constitutional amendment, however, it must overcome significant legislative obstacles to get on the ballot to be voted upon, which will take time to come to fruition.

Short Term Recommendations

In order to dissolve, replace, or change the functionality of COAH, amendments to the FHA would be required. The constitutional obligation to provide a realistic opportunity for affordable housing lies with the municipality, and it is not a requirement of the constitution that a state agency exists for the purpose of assisting municipalities. Therefore, COAH could be abolished through legislation, and any aggrieved party would have the right through a builder’s remedy lawsuit to challenge a municipality zoning scheme in court as was done before the FHA. In the alternative, the scope of COAH authority can be dramatically scaled back through legislation. In the event that legislation amending the FHA is not produced by the Legislature in a form acceptable to the new administration, then regulatory reform remains an option. In such an event, the best remaining course of action may be to scale back regulations and re-working the fair share estimates based upon a realistic analysis in light of the current housing market.

Recommendations for Immediate Action

- **Pursue legislation to amend the FHA.** Any new legislation to amend the FHA should address major deficiencies including, but not be limited to the following: (i) eliminating the obligation to retroactively satisfy perceived prior need; (ii) elimination of the growth share methodology of calculating need; (iii) expanding the definition of qualifying affordable housing to include non-deed-restricted properties that are government subsidized or other properties from the existing housing stock that have a rational basis for being treated as affordable; (iv) allowing municipalities greater flexibility in satisfying need through an emphasis on rehabilitation of existing housing or allowing the renewed use of RCAs; (v) insuring that municipalities are not obligated to expend their own resources to satisfy need to the extent possible; and (vi) restraining the role of the agency to a municipal assistance program rather than a policy making enterprise.

- **Issue a 90-day freeze on all new regulations, on new certifications and on all pending mediations.** This period would give the new administration time in order to pursue new legislation or, determine that new legislation is not achievable in the form desired by it so that regulatory reform can then be enacted. Municipalities could cease spending money on plans that will likely need to be revised again once new legislation and/or regulations are adopted. Municipalities in the Highlands should also be given a further extension of the time to submit their plans to COAH beyond June 2010 for at least 90 more days for the same reason.
- **Create a panel to consider policy and make specific recommendations.** A panel selected by the new administration could continue the work started by this subcommittee and make recommendations and coordinate with the new administration as to the best path to follow. The members of the DCA Transition Subcommittee who worked on this section of the report are ready, willing and able to continue this work. This panel should be formed as soon as possible, with recommendations to be made within 30 to 60 days of the inauguration.
- **Seek a stay in all pending litigation challenging the Third Round Rules.** Since oral arguments have already been heard by the Appellate Division in the primary consolidated appeal, the panel can issue its opinion at any time. Regardless of the outcome, the opinion could be disruptive and changes to the system during the stay would make any appeal moot.
- **Consider Changes in COAH's Leadership.** The subcommittee did not receive specific complaints about specific individuals within COAH, but COAH has veered off course from the intent and purpose originally given to it by the legislature.
- **Re-Direct Staffing.** During the 90-day freeze, assuming that staffing is not immediately reduced, only ministerial functions of monitoring of deed restriction and affordable housing trust funds need to continue during the 90 days.

APPENDIX I

Accountability Recommendations Regarding the Application of Sarbanes-Oxley And Other Requirements on Recipients of State Aid

DCA is a large, complex organization. It has significant fiduciary responsibilities that bring with them a commensurate level of fiduciary obligations. It is also subject to a wide array of statutes, regulations and codes of conduct on both the State and Federal levels. Significant improvement is required in DCA's auditing, compliance, and enforcement control systems.

For DCA, like other institutions, a vigorous system of auditing, compliance and enforcement controls is required to provide reasonable assurance that operations will proceed effectively and efficiently, that financial reports are reliable and that processes and procedures comply with applicable laws, regulations and policies. Other important potential benefits include the ability to:

- Demonstrate to New Jersey taxpayers DCA's commitment to fiscal responsibility;
- Identify and prevent criminal and unethical conduct;
- Improve sources of information on what expenditures do or do not work in a cost-effective manner in the public interest;
- Encourage people both inside and outside DCA to report potential problems;
- Improve procedures that allow the prompt, thorough investigation of alleged misuse of taxpayers' funds--whether through negligence or intentional misconduct; and
- Ensure immediate and effective corrective action where misuse has occurred.

There are significant opportunities for improvement throughout DCA's grant-in-aid process in the areas of control systems and performance measures to ensure that funds are properly used, that they achieve their intended results and that non-compliant organizations are censured.

Over the course of a number of years, a series of budget cuts at DCA have been applied in a manner that has compromised severely its ability to administer the necessary level of controls. In fact, the Internal Auditing Department staff has been allowed to decrease to a level (two auditors) where its effectiveness can be substantially questioned. Even in extreme budgetary circumstances, administrative

units that provide checks and balances to ensure accountability (such as internal auditors, financial and legal support, etc.) are central to the long-term health and appropriate functioning of a strong institution.

Ensuring that DCA's Auditing Department is not only adequately staffed to meet the growing demands of the DCA but that its personnel also have the requisite skills is a critical first step for DCA.

Although ensuring an effective auditing program will require a commitment of financial resources, the necessary expenditures are relatively insignificant in comparison to the problems of waste and misuse inherent in expending taxpayers' funds without a vigorous auditing and compliance program.

Furthermore, strong consideration should be given to the development and incorporation of SOX-like corporate responsibility best practices at the recipient level. As a first step, a certification of fiscal controls should be required from the Mayor, Business Administrator, Chief Financial Officer (or equivalent), the governing body and their nonprofit counterparts. In the private sector, SOX requires that both Chief Executive Officers (CEOs) and Chief Financial Officers (CFOs) review and sign quarterly and annual reports certifying that the reports do not misstate or fail to state material facts, and based on their knowledge, "fairly present in all material respects the financial condition and results of operations of the [company] as of, and for, the periods presented in the report." The same certification requirements can and should be applied to those officials of organizations receiving taxpayer funds through DCA.

Certification requirements should include those policies and procedures that:

- (a) pertain to the maintenance of records that in reasonable detail accurately;
- (b) fairly reflect the transactions and dispositions of the assets of the local government or nonprofit entity;
- (c) provide reasonable assurance that expenditures are being made only in accordance with the authorizations of the elected officials or nonprofit executives entrusted by the taxpayers with such responsibility (in the case of a municipality, the mayor and governing body); and
- (d) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements submitted to DCA.

While there are critical fiscal accountability weaknesses inside DCA, they are compounded by the lack of necessary skills at the grantee level (municipalities and nonprofits). Consequently, where it is the

case that DCA exercises suboptimal oversight and sporadic enforcement, the recipients themselves are occasionally incapable and/or unwilling to exercise fiduciary controls of their own.

Grantees need sufficient training so that they can understand the legal and fiduciary requirements governing grant funds. It is common sense that if grantees do not understand the various laws, policies and procedures governing grant funds, those laws, policies, and procedures will not be followed. To that end, a required formal education process stressing fundamental fiscal accountability should be developed for those who have responsibility for administering federal and state funds.

Once grants are awarded, it is vital that DCA properly manage the grants. DCA needs to ensure that grant funds are used for intended purposes in accordance with state and federal law, and will lead to planned results. Effective grant management increases the likelihood that grants will contribute to DCA's goals. When managing grants, DCA should address:

- **Better monitoring the financial status of grants;**
- **Ensuring results through performance monitoring;**
- **Using audits to provide valuable information about grantees; and**
- **Monitoring sub recipients as a critical element of grant success.**

Finally, serious consideration should be given to the centralization of compliance and fiscal enforcement in the Treasurer's Office where presumably there will be a higher level of fiduciary skills; the ability to share best practices on a broader (inter-departmental) level; and, importantly, the authority to administer penalties if necessary. To be successful, this centralization decision requires an initial and continuing investment of professional resources at Treasury or there is the risk of surrendering local control without improving the system.