

RESOLUTION

Approval of Non-action on Petition for Rulemaking from the Coalition for Affordable Housing and the Environment

WHEREAS, the State Planning Commission has received a petition for rulemaking from the Coalition for Affordable Housing and the Environment requesting that the State Planning Commission amend the State Planning Rules to require that a petitioner for initial plan endorsement obtain substantive certification from the Council on Affordable Housing (COAH) as a prerequisite for initial plan endorsement; and

WHEREAS, pursuant to N.J.A.C. 1:30-4.1, a notice of receipt of this petition for rulemaking was filed with the Office of Administrative Law and published in the September 20, 2004 New Jersey Register; and

WHEREAS, the State Planning Commission previously considered and addressed this issue when it considered and then adopted the State Planning Rules which took effect on May 17, 2004; and

WHEREAS, the State Planning Rules adopted on May 17, 2004 contain specific submission requirements for both initial and advanced plan endorsement; and

WHEREAS, consistent with the requirements of the Administrative Procedures Act, the submission requirements set forth in the State Planning Rules regarding both initial and advanced plan endorsement apply universally to all petitioners or to all petitioners in a particular class; and

WHEREAS, COAH certification status varies among municipalities in terms of which round of COAH rules they are compliant with, or whether they are compliant at all; and

WHEREAS, the Plan Endorsement Guidelines approved by the State Planning Commission in April 2004 accordingly establish as a guideline, rather than as a regulatory requirement, that COAH certification have been secured for advanced plan endorsement; and

WHEREAS, COAH has proposed but has not as yet adopted its rules for the third round; and

WHEREAS, it would not be appropriate to establish a submission requirement in the State Planning Rules that is dependent upon a pending rule proposal presently under consideration by another State agency and that could be impacted by changes made by the other State agency in considering and adopting that State agency's pending rule proposal; and

WHEREAS, the proposed COAH rules give municipalities one year from the effective date of the rules to apply for certification from COAH for the third round; and

WHEREAS, imposing a requirement in the State Planning Rules that municipalities have secured COAH certification in order to obtain initial plan endorsement will delay the ability of municipalities to obtain plan endorsement since it will take time after the COAH rules are adopted to actually obtain COAH certification; and

WHEREAS, imposing a new requirement for initial plan endorsement shortly after the adoption of the State Planning Rules will discourage municipalities from seeking plan endorsement; and

WHEREAS, initial plan endorsement is intended to consist of a review of the required elements of municipal master plans, including the housing element, with the more detailed level of planning required for COAH certification being more consistent with the detailed planning that is required for advanced plan endorsement; and

WHEREAS, the housing element that is required to be submitted for initial plan endorsement is required to address low and moderate income housing and the State Planning Commission will, in consultation with COAH, ensure that those requirements are appropriately addressed when the State Planning Commission reviews initial petitions for plan endorsement submitted by municipalities; and

WHEREAS, the State Planning Commission will be in a better position to evaluate whether a submission requirement relating to COAH certification should be included in the State Planning Rules, and, if so, whether it should be required at initial or advanced plan endorsement once COAH has adopted and implemented its Third Round rules, and the State Planning Commission has gone through the plan endorsement process with some municipalities,

NOW, THEREFORE BE IT RESOLVED that the State Planning Commission will not propose to amend the State Planning Rules as requested by the petitioner; and

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Date: October 20, 2004
Patron: Michele Byers, Chair
Plan Implementation Committee

BE IT FURTHER RESOLVED that the State Planning Commission hereby authorizes its secretary and principal executive officer, Adam Zellner, to inform the petitioner of this determination in writing and to place notice of the determination in the New Jersey Register.