

Date: March 5, 2010

To: New Jersey Housing Opportunity Task Force
Marcia Karrow, Chair

From: New Jersey Future
Peter Kasabach, Executive Director

Re: Review of Fair Housing Act, State Planning Act and COAH

This memo focuses on three elements:

- 1) Strengthening State Planning
- 2) Connecting Housing to State Planning
- 3) Building a Reliable Affordable Housing System

- 1) **Strengthening State Planning** – *using the power of land use coordination to increase efficiency, effectiveness and improve outcomes.*

Governor Christie has the opportunity to effectively reform state agency regulations and capital spending in a way that not only cuts red tape but leads to better outcomes on the ground: private sector investment that strengthens communities, a healthier environment with cleaner air and water, and more convenient ways to get around. Through simple steps, Governor Christie can recast the State Planning Commission as his tool to align all levels of government behind a shared vision for future growth and preservation, streamline and coordinate regulations and focus capital spending. New Jersey Future and others are working on amendments to the State Planning Act that will elevate the role of state planning to adequately direct growth and preservation efforts in the state.

SEE ATTACHED “State Planning Proposal” 12/30/09

- 2) **Connecting Housing to State Planning** – *recognizing that we need a state planning system and an affordable housing system that are separate but complementary.*

In 1985, the Legislature passed two landmark bills and linked them to each other – the Fair Housing Act and the State Planning Act. The Fair Housing Act guided the state’s affordable-housing policies and production, and the State Planning Act set the wheels in motion for a statewide land-use plan that would govern where and how we grow. New Jersey Future, a nonprofit, nonpartisan organization, has spent the past 22 years encouraging government at all levels to adhere to the smart-growth principles of the State Development and Redevelopment Plan, which directs development to appropriate locations and discourages the kind of sprawl that has been visited on too many parts of our small, densely populated state.

As we revisit the Council on Affordable Housing (COAH) and the Fair Housing Act, the State has an opportunity to improve this coordination, to resolve the sometimes conflicting guidelines and direction provided by the State Plan on the one hand and COAH requirements on the other. We strongly support the coordination of the state planning process with efforts to increase the

supply of affordable housing. It will be important to understand, however, the distinctly separate but complementary roles our state planning and affordable-housing systems must play.

State planning is a land-use process. State planning directs development into more compact, mixed-use, center-based patterns where infrastructure, transit and in many cases jobs exist. Development growth is often equated to economic growth and includes commercial and residential building. As we grow and develop, our economy creates jobs for people with high incomes and those with low incomes – we have yet to figure out an economic model that creates only high-income jobs. If we succeed in state planning we will have housing and commercial developments near each other, near transit, in places that encourage walking and biking, and that preserve our open spaces. If we assume that the state planning process can rationalize and direct where our housing ends up, then it is easy to understand that our affordable-housing process must ensure that these places contain a healthy mix of housing that is affordable to both high- and low-income households. The affordable-housing system cannot solve our land-use problems, and likewise our land-use system cannot solve our affordable-housing problems, but they must work together to place a mix of housing in appropriate places.

We support the provisions of S-1 that would move the affordable-housing administrative duties to the State Planning Commission. We strongly support a more prominent role for the State Planning Commission and this scenario could be made possible if: 1) the new affordable-housing process is reliable enough to minimize the bureaucratic work of the State Planning Commission and not completely distract it from its core mission; 2) the staff of the commission receives the resources it needs to implement the process; and 3) the State Planning Commission is removed from the Department of Community Affairs and elevated to a role where it can better coordinate state department rulemaking and capital spending.

3) Building a Reliable Affordable Housing System – *creating a fair, simple and predictable system that is embraced as the law-of-the-land*

Most people want to abolish COAH. One of the reasons for this is that the system is not reliable. By definition, a reliable system is one that we can depend on and is worthy of our trust. New Jersey has a historic opportunity to create a reliable affordable-housing system that meets three essential criteria: It must be fair, simple and predictable.

Fair means that everybody participates. Simple means that it's easy to understand what is expected and easy to measure progress. Predictable means that we know the rules and what the outcomes will be if we follow them – and the consequences if we don't.

Part of creating a reliable system is understanding what you want the system to do. We suggest that a reliable affordable-housing system for New Jersey should do the following:

- 1) Generate an easily understood “fair share” of affordable housing for each municipality. A simple approach is to require that every town have 4% of its housing stock affordable to low-income households, and 4% affordable to moderate-income households. Towns can achieve these percentages through a number of methods, including: rehabilitating existing units; buying down the price of existing units; creating accessory apartments; or

building new units either as part of market-rate developments or independently as long as the units carry long-term deed restrictions. A percent of the affordable units could be set aside for local residents or employees, and a percent for very-low-income households.

- 2) Ensure affordable units are built and integrated into the community. A straightforward approach is to require that all new residential developments include 8% low-income and 7% moderate-income units. By making this a statewide rule, towns, developers and landowners will know exactly where they stand when they plan for residential development. Additionally, as a statewide rule, this approach will allow land values to adjust appropriately across the board to accommodate this small percentage of affordable units. If the developer already owns the land, he or she will receive a density bonus, or other inducement if necessary, to make the project feasible.
- 3) Integrate with state planning. The current affordable-housing system is driving land-use decision-making with little consideration for the State Plan or the land-use policies embedded in it. The state planning system should be strengthened to guide residential growth of all kinds and affordable-housing opportunity creation should follow these locational decisions.
- 4) Simplify implementation. Using the above three rules would remove the planning function from COAH, and would encourage towns to plan and zone appropriately. COAH would no longer provide a shield for towns, and there would be significant market pressure for towns to proactively meet their fair share. Towns would be given an initial compliance period before the builder's remedy could be exercised. COAH would dissolve and a new quasi-judicial agency would take its place to enforce the simplified rules.
- 5) Generate funding to subsidize affordable units. With the above rules in place, towns and residential developers will be contributing to the production of affordable housing, but they shouldn't be the only ones. The State has funding programs in place currently that can be better targeted to assist towns. Commercial developers can also contribute, but in a way that does not hamper economic development. Towns could offer companies an opportunity to provide affordable housing for some of their low- and moderate-income employees. The company would pay the town an up-front payment, and the town would set aside a specific number of units in town for the employer. This has the added benefit of creating housing near jobs.
- 6) Keep units affordable to reduce long-term costs. Creating affordable rental and home ownership units costs money. Creating them once and maintaining them for the long term is a cost-effective approach that also promotes community stability. Affordable units should be restricted to low- and moderate-income households for as long as possible, in most cases for more than 30 years. Affordable-housing easements should also be considered that will allow for even longer-term controls.

SEE ATTACHED "Response to Task Force Charge" 3/5/10

December 31, 2009

To all of you who have expressed interest in moving state planning forward under the Christie administration, we have summarized what we believe is a developing consensus position on how to proceed, most importantly in the short-run.

As you may know, the Christie campaign provided a very thoughtful response to New Jersey Future's Smart Growth Questionnaire. The Governor-elect not only shared many of our concerns for issues like economic development, environmental preservation and transportation choice but he also pointed to the state planning effort as a useful tool to address those issues.

Through simple steps, **Governor-elect Christie can recast the State Planning Commission as his tool to align all levels of government** behind a shared vision for future growth and preservation, streamline and coordinate regulations and focus capital spending. Executive action during the transition can lay the groundwork for this effort. The following proposal is revenue-neutral, because the existing 2010 budget for the Office of Smart Growth is adequate to cover any staff costs.

The first step is to move the State Planning Commission (SPC) and its staff, the Office of Smart Growth (OSG), out of the Department of Community Affairs. This would signal that the Christie administration takes state planning seriously, that it will look at land use decision-making holistically and outside of its present departmental silos, and it would increase the odds of attracting a high-caliber staff CEO for the office.

As a second and interim step, we suggest moving the SPC and OSG to the Department of State, assuming that the department headed by the Lieutenant Governor has an expanded mandate to coordinate state agency actions. The CEO would report to the Lieutenant Governor. The new CEO must understand state government and smart growth issues and be a skilled leader who can bring together the often divergent interests and agendas of the affected state agencies — notably the departments of Environmental Protection, Transportation, Community Affairs and Agriculture. History has demonstrated that the effectiveness of state planning is undermined when the SPC and OSG are directly attached to any of these agencies.

The next step would be to create and pass legislation that increases the authority and stature of the SPC needed to coordinate the actions of state agencies, without the expense of creating a new state department. Several groups are working toward creating this legislation now. As part of the legislative initiative, decisions would be made that finalize the independent neutral location of the SPC (possibly "in but not of" Treasury) and the role of the CEO as: 1) a sub-cabinet member reporting to the governor (similar to the Board of Public Utilities and the Motor Vehicle Commission), 2) the chair of the SPC appointed by the governor (as in New York City) and/or, 3) an employee hired by the SPC (as in Pinelands).

New Jersey Future stands ready to work with the new administration to help effectuate these short and long-term changes and to help with the on-the-ground implementation.

Sincerely,

Peter Kasabach
Executive Director
New Jersey Future

Coordinating State-level Land Use Regulations and Capital Spending
A State Planning Proposal
December 17, 2009

Summary

Governor-elect Christie has the opportunity to effectively reform state agency regulations and capital spending in a way that not only cuts red tape but leads to better outcomes on the ground: private sector investment that strengthens communities, a healthier environment with cleaner air and water, and more convenient ways to get around. Through simple steps, Governor-elect Christie can recast the State Planning Commission as his tool to align all levels of government behind a shared vision for future growth and preservation, streamline and coordinate regulations and focus capital spending. Executive action during the transition can lay the groundwork for this effort. This proposal is revenue-neutral, because the existing 2010 budget for the Office of Smart Growth is adequate to cover any staff costs.

What's working now

State agencies have acted aggressively to achieve their missions through far-reaching regulations and spending decisions. At times, they have based their decisions according to the strategic policy map in the *State Development and Redevelopment Plan* that depicts appropriate locations for growth. For example, the Board of Public Utilities amended its rules to require that the cost of extension of utility service outside of areas designated for growth in the State Plan be charged to developers. The Economic Development Authority and the Housing and Mortgage Finance Agency prioritized projects and funding incentives in State Plan growth areas. The Department of Transportation established the Transit Village program in line with State Plan goals and the Legislature went further and focused new financial incentives for development near urban transit hubs.

What's not working and can be changed

More often than not though, New Jersey's planning and regulatory environment sends conflicting signals about where growth will be supported by state permits and policy. These conflicts are not necessarily a result of bad or unnecessary regulations, but rather regulations that are not *coordinated* with each other, devised by individual state agencies acting autonomously. Examples of conflicting land use regulations and plans include: COAH rules (and resulting municipal fair share plans), Water Quality Management Planning rules (and resulting wastewater management plans), county comprehensive farmland preservation plans, and state –approved redevelopment areas. Satisfying all of the rule requirements can be simply impossible for municipalities. Development and redevelopment projects take longer and cost more because regulatory requirements conflict and are unclear. The end result is high costs for local government and developers and sometimes irrational outcomes.

Suffering from an enormous structural budget deficit, the state has increasingly limited financial resources with which to attract new jobs and private investment. Too often capital programs are not carefully targeted according to a strategic plan. For example, New Jersey is poised to invest billions of dollars in the ARC tunnel, which could transform scores of train station areas that will enjoy better access to New York City. However, to date, there has been no systematic attempt to assess which station areas have the greatest market potential for transit-oriented development, what essential infrastructure gaps exist, and which deserve public investment.

The State Development and Redevelopment Plan, adopted pursuant to the State Planning Act of 1985, provides a blueprint for state capital investments and a body to coordinate rule-making—all in support of a strategic vision for New Jersey’s future growth and preservation. But the State Planning Commission (SPC) has been rendered ineffective by recent administrations that have failed to maintain SPC membership and professional staffing. In addition, the current location, stature, authority and structure of the State Planning Commission make it difficult to adequately coordinate state agency rule-making and capital spending behind the state plan. The statutory mandate to update the State Plan through cross-acceptance every three years is too time and resource intensive.

Recommendations for Change

Meaningful regulatory reform demands *coordination* of rule-making and capital spending between agencies, and measurement of its impact according to a balanced plan for growth and development. The State Planning Commission and its State Development and Redevelopment Plan offer the Governor a tool to accomplish both, if invigorated through a short list of executive actions during the transition period and early days of his administration:

- The Governor-elect should choose one of the following two options for relocating the SPC and its staff from the Department of Community Affairs:
 - Locate the SPC “in but not of” the Department of State, assuming that the department has a new mandate to coordinate state-agency actions. The staff chief executive officer would report to the Lt. Governor. OR,
 - Move the SPC “in but not of” a neutral agency such as Treasury. Elevate the position of the staff chief executive officer to a sub-cabinet level position reporting directly to the governor to give the office the stature needed to coordinate state agencies, without the expense of creating a new state department. (The Board of Public Utilities and the Motor Vehicle Commission follow this model).
- All newly appointed cabinet-level commissioners should be informed of these changes and the coordinating role of the State Planning Commission when they are recruited.
- Depending on where the SPC and its staff are located, the Governor-elect should either:
 - Seek amendments to the State Planning Act to make the Lt. Governor the Chair of the State Planning Commission, to provide the stature needed to coordinate state agencies. OR,
 - Recruit the staff chief executive officer with the intention that this person will be appointed to the State Planning Commission. Seek amendments to the State Planning Act to make the chief executive officer the chair of the Commission.

The State Planning CEO should have a close working knowledge of the ways in which state agencies function and of smart growth issues. The CEO would be responsible for overseeing the staff and brokering state department actions for consistency with the State Plan. This person should also be tasked with participating in the Governor-elect’s announced review of state agency regulations to ensure that revised regulations are consistent with the State Plan.

- The Governor-elect should commit to maintaining the Office of Smart Growth budget at its FY2010 level of \$1,789,000.
- The Governor-elect should prepare to make appointments for the vacant seats on the State Planning Commission immediately upon assuming office.
- The Governor’s first inaugural address should describe the prominent role the State Plan will play in shaping state government actions – planning, rule-making and spending – to improve New Jersey’s economic competitiveness, environmental health and quality of life.

- The Governor should institutionalize the central role the state planning CEO will play in coordinating rule making and capital spending through an Executive Order.

Momentum is building for simple amendments to the State Planning Act in 2010 that would provide additional support. While not urgent, these amendments would authorize the full reorganization of the State Planning Commission and its leadership (described above), codify them and make them permanent. They would clarify the powers of the SPC and its CEO. They would reduce the frequency of State Plan updates, freeing staff for other tasks.

Who will support and oppose.

Many New Jersey residents and interest groups support measures to strengthen state planning, as evidenced by the overflow crowd of nearly 300 people who attended the October symposium, “Where Are We Growing? Planning for New Jersey’s Next 20 Years,” co-sponsored by New Jersey Future and Princeton University’s Policy Research Institute for the Region.

New Jersey Future’s proposals for state planning are generally supported by a range of groups as evidenced by those who signed a joint letter to Governor Corzine last June (see attached) that called for several actions, including moving the Office of Smart Growth to a neutral location such as Treasury and making the office’s chief administrator a member of the Governor’s cabinet. Signatories included representatives of sixteen organizations representing business, development, agriculture, historic preservation, housing and planning.

Other groups are interested, but have some concerns. NJF is working closely with members of the environmental community who agree that state planning could offer better outcomes than today’s reliance on a patchwork of regulations but are wary of any effort to promote growth, until it is fully understood. The League of Municipalities support a stronger state planning effort that helps municipalities manage growth and are in favor of moving the Office of Smart Growth out of DCA—but will not support new SPC powers that undermine local authority.

Why this makes sense now.

Strengthening the State Planning effort offers Governor-elect Christie a unique tool to turn around the state’s economy with limited public resources. It is designed to align government actions – across state agencies and among all levels of government - to achieve the kind of growth that will not only help New Jersey attract investment, but protect its environment, strengthen its cities and other communities, and improve the quality of life for all residents. The State Plan will help him govern, by providing policy guidance for reforms to regulation and capital spending to ensure good long-term outcomes. And it offers an existing framework for proposing changes, engaging public debate, and seeing them through to implementation.



For more information, please contact:

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**NEW JERSEY FUTURE response to the
Housing Opportunity Task Force Executive Order charge
March 5, 2010**

The Task Force is charged with providing recommendations to the Governor and specifically shall consider the following, among other issues:

(1) the best means for determining whether a municipality should have any further affordable housing obligation;

We recommend a simple system that has two components: a standard percent of affordable housing in every town, and an inclusionary set-aside for all new residential development.

First, we recommend a simple percent standard that each town must meet. If the town meets the standard, then it has no further obligation, other than a growth-share obligation. Two simple standards to consider are:

- 4% of housing stock plus 4% of total jobs equals total low- and moderate-income housing unit obligation. This obligation is split 50/50 between low- and moderate-income units, or
- 4% of housing stock for low-income obligation, and 4% for moderate-income obligation

We think the housing and job standard is better from a state planning and land-use perspective. The above standards ensure that towns always have a fair share of affordable housing, without requiring towns to grow. For the handful of large towns that would have very large affordable-housing obligations, the total number of units could be capped.

Second, and to account for growth, the state should establish an inclusionary set-aside for every new residential development equal to 8% low income and 7% moderate income. For example a new 100-unit development would include 8 low-income units and 7 moderate-income units.

(2) the regions that have been used by COAH for more than 20 years and whether they are still appropriate;

Using the simple affordable-housing system identified above removes the need for COAH regions. COAH regions were used in part to determine affordability levels based on regional median incomes. Affordability ranges can be calculated at the county level using existing federal standards, without the need for COAH regions.

(3) the means of incorporating workforce housing into the concept of affordable housing;

We assume “workforce housing” means “middle-income housing” affordable to households between 80% and 120% of the area median income. While this group needs access to affordable housing, the need is much less dire than for low- and moderate-income families. Limited affordable-housing resources should not be shifted away from low- and moderate-income families to meet the middle-income need.

Here are three acceptable approaches to including middle-income housing:

- Identify a new revenue source to subsidize middle-income units above and beyond the existing requirements for low- and moderate-income households, or

- Raise the municipal affordable-housing standard percentages listed above so that a town would be obligated to 4% low-, 4% moderate- and 2% middle-income units. Likewise, the inclusionary set-asides would be 8% low-, 7% moderate- and 5% middle-income, or
- Provide other types of incentives to middle-income buyers that reduce the cost of owning the home, such as reduced interest mortgages, closing-cost and down-payment assistance, energy efficiency upgrades, and transportation commuting credits.

If actual middle-income units are created, then they must be deed-restricted. Without deed restrictions, the units will provide no public benefit and will in fact simply shift scarce affordable-housing resources to a windfall profit for the first middle-income buyer of the unit. The dynamic is the same for rental units, but instead of the windfall to the homeowner it will go to the landlord, who can immediately raise rents up to market levels.

(4) the diverse and significantly divergent State projections for housing and employment growth to determine the obligation for a variety and choice of housing, taking into consideration the need for open space preservation and environmental protection as elements of sound land use planning;

The State Plan and the State Planning Commission should determine where we grow and develop and where we preserve and protect. The affordable-housing system should be an overlay to the State Plan. If an area is a growth area identified for housing, then a percentage of that housing should be affordable. The affordable-housing system should not be responsible for determining where growth takes place.

Using the simple affordable-housing system identified above, there would be no need to make housing and employment growth projections. Every town would be required to have a fixed percentage of affordable housing. If towns grow, then the number of affordable-housing units will grow as well. The methodology above that includes 4% housing and 4% jobs is particularly well-suited to address the housing and jobs balance issue.

(5) mechanisms that should be used to support the rehabilitation of deteriorating housing in the urban centers;

There are fundamentally two different concepts here that need to be pulled apart. The first is the rehabilitation of deteriorating housing, the second in the revitalization of urban centers. For too many years, we have combined these two concepts and disastrously tried to use affordable-housing policies to revitalize cities. New Jersey Future would be happy to expand on this distinction and concept at another time.

We do not think it is up to the state's affordable-housing system to address substandard and deteriorating housing. Homeowners must maintain their own homes. Landlords must maintain their properties. The state and municipalities can use existing funding sources, like CDBG or weatherization programs, to help low- and moderate-income homeowners and landlords repair their properties.

There are a number of funding mechanisms that have been pioneered by the New Jersey Housing and Mortgage Finance Agency to help revitalize urban markets through market-rate housing development. These programs should be prioritized and given adequate resources. There are

many other tools and techniques for helping urban neighborhoods revitalize, but virtually none of these involve an emphasis on more low- and moderate-income housing.

(6) the means of developing economies, efficiencies, and savings in the development process;

As stated earlier, requiring an inclusionary set-aside of affordable units in all new residential developments will provide enormous cost savings over time. In most marketplaces, high housing prices are driven by high land costs. If all residentially zoned land needed to accommodate a fixed percentage of affordable units, then the value of that land will decline to reflect the new reality. The entire affordable-housing system will recognize significant cost savings when this happens.

Long-term deed restrictions or affordability easements should be seriously considered. Without deed restrictions, we will need to keep re-creating our affordable-housing stock. Each time we do, the land and construction gets more expensive. Taking the land off the market by restricting it for a long time will save a tremendous amount of money over the long run.

Our land-use development approval process is time-consuming and expensive. This is particularly true of redevelopment. The state can make a concerted effort on projects involving redevelopment to streamline and consolidate regulatory reviews to reduce developer risk and save money. The DEP Permit Efficiency Task Force made significant inroads in this area.

(7) ways to encourage rehabilitation as well as new development in meeting the need for affordable housing;

The simple two-part affordable-housing system outlined above – a fixed percentage of housing stock, coupled with required inclusionary growth share – creates both the opportunity and incentive for towns to create affordable housing without sprawling. Likewise, towns that choose to redevelop will have an easier time meeting their affordable-housing obligation. In addition, any new affordable-housing system should not favor inclusionary/builder's remedy housing developments over all of the other options, such as in-fill development, rehabilitation or conversion.

(8) the appropriateness of methodologies that continue to include prior round need or include retroactive growth as part of a growth share approach; and

Using the simple affordable-housing system described above would eliminate the need for prior round obligations while giving towns credit for the housing they have already produced, including counting all restricted units such as public housing, project-based Section 8 and HUD and HMFA financed projects.

(9) any other issue referred to the Task Force by the Governor.

New Jersey Future encourages the Task Force to make its information-gathering and conclusions available to as wide a public audience as possible. The issues you are dealing with are large and complicated, and will benefit greatly from broad stakeholder input.