

Minnesota Attorney General: Administrative Rules Proceedings

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ADMIN. 1000A
3

STATE OF MINNESOTA

DEPARTMENT Attorney General/SPA

Office Memorandum

TO : Michael B. Miller
Special Assistant Attorney General

DATE: September 10, 1976

FROM : Donald A. Kannas
Special Assistant Attorney General

SUBJECT:

Attached please find a copy of the record and an original and one copy of all necessary documents in the matter of State Planning Land Use Planning Grant Program rules.

I have also included five copies of the rules as adopted and, for your convenience, a single copy of the rules as adopted showing the changes from the rules as proposed by means of striking out and underlining.

DAK;jh

Attachments

264

Attorney General

Donald A. Kannas
Special Assistant
Attorney General

September 27, 197

Michael B. Miller
Special Assistant
Attorney General

296-4692

State Planning Transportation Rules

The above captioned rules are returned herewith for the following corrections as to supporting documentation:

1. An affidavit by the person who mailed out the Notice of Hearing indicating that a copy of the proposed rule was sent with each such notice;

2. Findings of Fact by the agency;

3. An Order Adopting Rules;

4. Certificate of Compliance with Rulemaking Procedures.

When this additional documentation is supplied, the rules will be filed with the Secretary of State.

MBM/mb

Enclosure

264

Donald A. Kannas
Special Assistant Attrrney General
State Planning Agency

October 4, 1976

-SPA101 - SPA125

RULES
LAND USE PLANNING GRANT PROGRAM

SPA101 AUTHORITY. The State Planning Agency is authorized to adopt rules necessary to carry out the Land Use Planning Grant Program pursuant to Minn. Stat. §§ 4.27 to 4.31.

SPA102 DEFINITIONS. The following terms as used in these regulations shall have the following meanings:

A. "Agency" means the State Planning Agency.

B. "Eligible recipient" means a city, county, town or any combination of such units. A city of the first class may apply for a grant to assist neighborhood organizations to do land use and related planning.

C. "Land Use Planning" means the process by which units of local government consider alternative uses of land. The purpose of land use planning is to foster a compatible arrangement of uses on the land; to provide suitable locations of sufficient size for such diversified uses as housing, business, agriculture and recreation; and to maintain a high quality environment. The basic steps in the process are: (1) Examine characteristics of the land and related factors that determine potential future uses. (2) Examine

alternative uses of the land which are consistent with state and local policies and the physical environment. (3) Select the most desirable alternative. (4) Develop and use appropriate actions to carry out the selected alternative. Examine the results of the actions to determine whether they are in fact achieving the selected alternative and are not producing undesirable results.

D. "Neighborhood Organizations" means those organizations recognized by the city government for planning and community development purposes, in neighborhoods with boundaries officially determined by the city.

E. "In-kind" means 1) salary and cost of fringe benefits of the grant recipient staff working on activities funded by the grant, 2) increases in overhead resulting from carrying out activities funded by the grant.

SPA103 APPLICABILITY. These rules (SPA 101 - 125) apply to that portion of the appropriation which is available for grants to local governments outside the metropolitan area as defined in M.S. Sect. 473.02 and Chapter 127, Laws of 1976, Sec. 2, Subd. 7. See Laws of Minnesota 1976, Chapter 167, Sect. 6.

SPA104 ELIGIBLE ACTIVITIES. The following are eligible activities:

A. Land use planning or implementation activities that will result in the management of land use problems created by:

1. rapid population or economic growth or decline;
2. potential development in environmentally sensitive areas;
3. the addition or elimination of a major state or federal facility.

B. Analysis and preparation of plans to preserve and protect agricultural land;

C. Modification or preparation of plans or land use controls made necessary by:

1. designation of a wild and scenic river;
2. flood plains standards;
3. shoreland management standards;
4. other similar legislative action.

D. Land use and related planning done by neighborhood organizations in cities of the first class.

SPA105 INELIGIBLE ACTIVITIES. The following are ineligible:

A. Activities which are more detailed than necessary to provide guidance in the management of land use problems, (for example, architectural drawings, site designs, engineering specifications);

B. Activities which are unrelated to the management of the land use problem;

C. Activities which are being carried out by the applicant, however, the costs associated with the expansion or acceleration of existing activities shall be eligible;

D. Activities for which funding is readily available from other sources.

SPA106 APPLICATION PROCEDURE. The application for land use planning grant assistance shall be submitted in two stages: Preliminary and final. Assistance in the preparation of the final application will be available from the Agency. The grant shall not pay any cost incurred by the applicant prior to approval of the grant.

SPA107 MULTI-JURISDICTIONAL APPLICATIONS. A land use problem may affect more than one unit of government. For problems of this kind, one application should be made jointly by all affected units of government.

SPA108 PRELIMINARY APPLICATION. A preliminary application shall be submitted to the Agency to determine eligibility and priority. The preliminary application shall be in the form and manner prescribed by the Agency and shall contain the information required by the Agency including at least the following:

A. The name of the unit of local government making the application;

B. A brief statement of the land use problem for which assistance is sought;

C. A brief statement of the results which are hoped to be achieved through use of the assistance;

D. A list of the activities which will be carried out with the assistance;

E. A statement identifying the sources for the local share (the local share may be either cash or in-kind);

F. The total estimated cost and the amount of assistance being sought;

G. A list of existing available data which could be used to help analyze the problem;

H. A copy of a resolution transmitting the preliminary application to the Agency. The resolution must be passed at an official meeting of the governing body.

SPA109 PRELIMINARY APPLICATION DUE DATE. Preliminary applications shall be submitted semiannually not later than January 1 and July 1, except that during Fiscal Year 1977 there shall be only one due date for preliminary applications and that shall be 60 days after adoption of these rules.

SPA110 REGIONAL DEVELOPMENT COMMISSION REVIEW. The preliminary application shall be submitted to the appropriate Regional Development Commission for review and comment at least 45 days before the date on which applications are due in the Agency. Regional Development Commission may waive this requirement. Within 5 days of the time a preliminary application is submitted to the Regional Development Commission the applicant shall forward a copy of it to the Agency. The Regional Development Commission shall return the preliminary application with comments to the applicant in sufficient time to allow the applicant to submit the preliminary application to the Agency by the due date. Failure of the Regional Development Commission to complete its review of the preliminary application within 45 days shall be considered approval of the application by the Regional Development Commission, unless the applicant and the Regional Development Commission agree to an extension of the 45 day period. The applicant shall submit the preliminary application with the Regional Development Commission's comments to the Agency on or before the due date. The Regional Development Commission may submit to the Agency a list of applications from the region arranged in order of priority established by the Regional Development Commission. The Agency shall consider the Regional Development Commission's comments and

priorities when reviewing the preliminary application.

SPA111 APPLICATION REVIEW AND PRIORITY SETTING. The Agency shall have 30 days to review all preliminary applications. Incomplete and ineligible applications will be returned to the applicant with a statement citing the reasons, and shall not be considered for funding.

The remaining applications will be assigned a priority as follows:

1st Priority - Those preliminary applications which identify existing or emerging land use problems resulting from two or more of the following:

A. rapid population or economic growth or decline;

B. potential development in an environmentally sensitive area;

C. the addition or elimination of a major state or federal facility.

2nd Priority - Those preliminary applications which identify existing or emerging land use problems resulting from at least one of A, B, or C above.

3rd Priority - All other eligible applications.

Within each priority the application will be ranked

according to the magnitude of the problem. Based on the priorities and availability of grant funds, final applications will be requested by the agency through a letter of notification. The appropriate Regional Development Commission will be notified of the action taken on preliminary applications.

SPA112 FINAL APPLICATION. The final application may be submitted by an applicant that has received a letter of notification. Final application shall be submitted to the Agency as soon as possible after receipt of the letter of notification to prepare a final application. All final applications must be received by the Agency in a format conforming to SPA113 no later than 45 days after the date of the letter of notification. Final applications will be reviewed for completeness. Incomplete applications or applications substantially different than the preliminary application will be returned with a statement indicating the reasons and will not be considered for funding. Remaining applications will be funded based on the priorities and availability of grant funds. Receipt of a letter of notification by an applicant does not guarantee that a grant will be made to fund the final application.

SPA113 FINAL APPLICATION FORMAT. The final application shall contain the following elements:

A. Work Program/Schedule. A work program which contains the following:

1. A statement of the existing or emerging land use problem which is to be investigated with the grant. This statement should identify how the problem is affecting or will affect the recipient, and the means the recipient is willing to use to alleviate the problem.

2. A description of the activities which will be undertaken with the grant. The description of activities should identify expected products and should be in sufficient detail to enable the Agency to measure progress and to identify the person responsible for completion of each activity. The description should include expected completion dates, by activity. Each activity should be assigned to a specific staff member or consultant.

3. A statement identifying the way in which the governing body and the planning commission will improve their capability in land use decision making. A schedule should be included indicating when and how this will be accomplished.

B. Lead Agency. The grant recipient must identify an organization or an individual as the lead agency for the work program.

C. Local Share. A detailed statement identifying sources for the local share. The local share may be in cash or in-kind.

D. Signature/Resolution. The signature of the mayor, chairman of the county board or chairman of the town board. The governing body must transmit the final application to the Agency accompanied by resolution passed at an official meeting of the governing body.

SPA114 FUNDING PERIOD. Final applications approved for funding will be funded for one year. Work not completed within the one year period will be considered for funding in the next funding cycle along with other applications under the provisions of SPA111.

SPA115 GRANT RATIO. The grant shall not exceed 75 percent of the total first year cost. Grants for the second year of a multi-year project shall not exceed 50 percent of the total second year cost. Grants for the third year of a multi-year project shall not exceed 30 percent of the total third year cost.

SPA116 CONTENT OF CONTRACT. The planning grant contract shall be based upon the final application. It shall specify

the amount of the grant that shall be awarded to the recipient and shall be effective for a period of not more than one year. It shall include the assurance of the eligible recipient that it will provide the required local share and carry out the work program. For an application made jointly by more than one eligible recipient, only one contract shall be executed on behalf of all eligible recipients participating in the program. The Agency may grant one extension of not more than 90 days to enable completion of the work program.

SPA117 DISBURSEMENT SCHEDULE. The grant money shall be available to the grant recipient as follows: 50% during the first month of the contract; 40% upon completion of one-half of the work; 10% upon completion of a satisfactory evaluation.

SPA118 EVALUATION. 10% of the grant shall be withheld pending completion of a satisfactory evaluation by the Agency of the work performed. This evaluation shall take place within 30 days of the termination of the contract. The evaluation will include determination of whether:

A. The local share was contributed,

B. The work specified in the work program was completed, and

C. The results have been used by the governing body when making land use decisions.

If the grant recipient does not agree with the findings of the evaluation, it may request a hearing as provided in the administrative procedures act, Minn. Stat. §§ 15.0418 - 15.0426.

SPA119 REQUIRED REPORTS. The grant recipient shall submit quarterly work progress reports to the Agency on forms provided by the Agency.

SPA120 USE OF FUNDS. To carry out activities specified in the work program, grant funds may be used to: (1) pay existing staff; (2) Hire new staff; (3) Pay staff of another unit of government under a Joint Powers Agreement; (4) Employ a qualified consultant; (5) Pay other costs associated with the work program such as overhead, rental of space and equipment, purchase of supplies, printing and publishing. The purchase of equipment, space, land or buildings is not an eligible cost or in-kind contribution. Services rendered by state or federal departments or agencies shall not be used as in-kind contribution. Federal or state funds obtained from another grant program may not be used as in-kind contribution. The applicant must be able to demonstrate that staff or consultants have education and experience necessary to perform the tasks assigned.

SPA121 RECORDS. The grant recipient shall maintain, on forms supplied by the Agency, records of time spent by

staff on each task identified in the contract.

SPA122 DEVIATIONS. No grant funds may be used to finance deviations from the contract unless such deviations are approved by the Agency. No grant funds may be used to employ a consultant not specified in the contract unless approval is given by the Agency.

SPA123 MULTI-YEAR PROGRAMS. Multi-year work programs may be submitted. Receipt of a grant for the first year is not a guarantee that a grant will be received for the remaining years. Multi-year work programs will be funded one year at a time. Each subsequent year of the work program will be evaluated along with new applications in the manner prescribed in SPA111.

SPA124 AGENCY ASSISTANCE. Staff from the Agency will be available to assist the grant recipient with the following:

A. Preparation of the final application;

B. Selection of consultants;

C. Conducting of information, training or capability building meetings;

D. Technical assistance during the contract period.

SPA125 Funds appropriated for grants for Critical Areas Planning purposes by Laws of Minn. 1976, Chapter 167, and any future funding for such grants appropriated to the State Planning Agency, shall be distributed to those public bodies authorized by such acts, in accordance with the planning

requirements contained in the recommendations of the MEQC made upon findings of fact based upon the evidence submitted at the public hearing and as further adopted by the Governor, and the following guidelines:

A. No grants for preparing critical area plans and regulations shall be made for projects or portions of projects which go beyond the scope of the procedures required by the critical areas planning process.

B. No grants for preparing critical area plans and regulations shall be made to units of government for any plans and regulations or portions of plans and regulations prepared prior to the designation of the critical area by the Governor.

C. No grants for preparing critical area plans and regulations shall be made to units of government which cannot demonstrate a need for such funds occasioned by inadequate financial and personnel resources.

D. All other available funding from other units of government shall be considered when determining the amount of the grants for the critical areas planning process under these regulations.

E. The State Planning Agency reserves the right to award grants on a pro rata basis based upon

demonstrated need, in the event that the funds available are not sufficient to cover such demonstrated needs and the estimated funds needed for other critical areas for which a notice of hearing has been issued pursuant to MEQC 53(e) at the time of distribution.

APPROVED AS TO FORM AND LEGALITY
SEP 30 1976 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT - 1 1976 11:45 AM
Joan Anderson Growe
Secretary of State

PROPOSED RULES
LAND USE PLANNING GRANT PROGRAM

~~Preamble.--The authority to make land use decisions has been delegated by the State to units of local government (M.S. 394.21 f, M.S. 462.351 f, 366.182). The complexity of land use decisions has increased, and the legislature has imposed mandatory land use planning and implementation responsibilities (shoreland and flood plain management, critical areas, and others) on units of local government. The legislature established this grant program to aid local units that lack financial and staff capability and experience in making land use decisions.~~

~~Grants will be made to units of local government to employ staff or contract with other public bodies or qualified consultants. This additional personnel will be used to develop solutions to complex land use problems and to assist in satisfying other required land use planning and implementation programs. This process is designed to improve the land use decision-making capability of local government.~~

SPA101 Authority. The State Planning Agency is authorized to adopt rules necessary to carry out the Land Use Planning Grant Program pursuant to Minn. ~~Laws, 1976 Chapter 167.~~ Stat. §§ 4.27 to 4.31.

SPA102 Definitions. The following terms as used in these regulations shall have the following meanings:

~~(a) "Act" means the Minnesota Land Use Planning Grant Act, Minn. Laws 1976, Chapter 167.~~

(a) ~~(b)~~ "Agency" means the State Planning Agency.

(b) ~~(c)~~ "Eligible recipient" means a city, county, town or any combination of such units. A city of the first class may apply for a grant to assist neighborhood organizations to do land use and related planning.

(c) ~~(d)~~ "Land Use Planning" means the process by which units of local government consider alternative uses of land. The purpose of land use planning is to foster a compatible arrangement of uses on the land; to provide suitable locations of sufficient size for such diversified uses as housing, business, agriculture and recreation; and to maintain a high quality environment. The basic steps in the process are: (1) Examine characteristics of the land and related factors that determine potential future uses. (2) Examine alternative uses of the land which are consistent with state and local policies and the physical environment. (3) Select the most desirable alternative. (4) Develop and use appropriate actions to carry out the selected alternative. Examine the results of the actions to determine whether they are in fact achieving the selected alternative and are not producing undesirable results.

(d) ~~(e)~~ "Neighborhood Organizations" means those organizations recognized by the city government for planning and community development purposes, in neighborhoods with boundaries officially determined by the city.

(e) ~~(f)~~ "In-kind" means 1) salary and cost of fringe benefits of the grant recipient staff working on

activities funded by the grant, 2) increases in overhead resulting from carrying out activities funded by the grant.

SPA103 Applicability. These rules (SPA 101 - 125) apply to that portion of the appropriation which is available for grants to local governments outside the metropolitan area as defined in M.S. Sect. 473.02 and Chapter 127, Laws of 1976, Sec. 2, Subd. 7. See ~~Sect. 6 of the Act.~~ Laws of Minnesota 1976, Chapter 167, Sect. 6

~~SPA104 Purpose. The purpose of the Land Use Planning Grant Program is to provide financial assistance to eligible recipients to assist in solving land use and related problems and to improve the recipient's ability to resolve similar future problems.~~

SPA105 Eligible Activities. The following are eligible activities:

(a) Land use planning or implementation activities that will result in the management of land use problems created by:

(1) rapid population or economic growth or decline;

(2) potential development in environmentally sensitive areas;

(3) the addition or elimination of a major state or federal facility.

(b) Analysis and preparation of plans to preserve and protect agricultural land;

(c) Modification or preparation of plans or land use controls made necessary by:

(1) designation of a wild and scenic river;

(2) flood plains standards;

(3) shoreland management standards;

(4) other similar legislative action.

(d) Land use and related planning done by neighborhood organizations in cities of the first class.

SPA1065 Ineligible Activities. The following are ineligible:

(a) Activities which are more detailed than necessary to provide guidance in the management of land use problems, (for example, architectural drawings, site designs, engineering specifications);

(b) Activities which are unrelated to the management of the land use problem;

(c) Activities which are being carried out by the applicant~~;~~, however, the costs associated with the expansion or acceleration of existing activities shall be eligible;

(d) Activities for which funding is readily available from other sources.

SPA1076 Application Procedure. The application for land use planning grant assistance shall be submitted in two stages: Preliminary and final. Assistance in the preparation of the final application will be available from the Agency. The grant shall not pay any cost incurred by the applicant prior to approval of the grant.

SPA1087 Multi-jurisdictional Applications. A land use problem may affect more than one unit of government. For problems of this kind, one application should be made jointly by all affected units of government.

SPA1098 Preliminary Application. A preliminary application shall be submitted to the Agency to determine eligibility and priority. The preliminary application shall be in the form and manner prescribed by the Agency and shall contain the information required by the Agency including at least the following:

(a) The name of the unit of local government making

the application;

(b) A brief statement of the land use problem for which assistance is sought;

(c) A brief statement of the results which are hoped to be achieved through use of the assistance;

(d) A list of the activities which will be carried out with the assistance;

(e) A statement identifying the sources for the local share (the local share may be either cash or in-kind);

(f) The total estimated cost and the amount of assistance being sought;

(g) A list of existing available data which could be used to help analyze the problem;

(h) A copy of a resolution transmitting the preliminary application to the Agency. The resolution must be passed at an official meeting of the governing body.

SPA1~~1~~0<u>09</u> <u>Preliminary Application Due Date</u>. Preliminary applications shall be submitted semiannually not later than January 1 and July 1, except that during Fiscal Year 1977 there shall be only one due date for preliminary applications and that shall be 60 days after adoption of these rules.

SPA11~~1~~<u>0</u> ~~Preliminary Application Review.~~ <u>Regional Development Commission Review</u>. The preliminary application shall be submitted to the appropriate Regional Development Commission for review and comment at least 45 days before the date on which applications are due in the Agency. Regional Development Commission may waive this requirement. Within 5 days of the time a preliminary application is submitted to the Regional Development

Commission the applicant shall forward a copy of it to the Agency. The Regional Development Commission shall return the preliminary application with comments to the applicant in sufficient time to allow the applicant to submit the preliminary application to the Agency by the due date. Failure of the Regional Development Commission to complete its review of the preliminary application within 45 days shall be considered approval of the application by the Regional Development Commission, unless the applicant and the Regional Development Commission agree to an extension of the 45 day period. The applicant shall submit the preliminary application with the Regional Development Commission's comments to the Agency on or before the due date. The Regional Development Commission may submit to the Agency a list of applications from the region arranged in order of priority established by the Regional Development Commission. The Agency shall consider the Regional Development Commission's comments and priorities when reviewing the preliminary application.

SPA1121 Application Review and Priority Setting. The Agency shall have 30 days to review all preliminary applications. Incomplete and ineligible applications will be returned to the applicant with a statement citing the reasons, and shall not be considered for funding.

The remaining applications will be assigned a priority as follows:

1st Priority - Those preliminary applications which identify existing or emerging land use problems resulting from two or more of the following:

a) rapid population or economic growth or decline;

b) potential development in an environmentally sensitive area;

c) the addition or elimination of a major state or federal facility.

2nd Priority - Those preliminary applications which identify existing or emerging land use problems resulting from at least one of a) b) or c) above.

3rd Priority - ~~Those preliminary applications which analyze and prepare plans to preserve agricultural land~~. All other eligible applications.

Within each priority the application will be ranked according to the magnitude of the problem. Based on the priorities and availability of grant funds, final applications will be requested by the agency through a letter of notification. The appropriate Regional Development Commission will be notified of the action taken on preliminary applications.

SPA11~~3~~2 Final Application. The final application may be submitted by an applicant that has received a letter of notification. Final application shall be submitted to the Agency as soon as possible after receipt of the letter of notification to prepare a final application. All final applications must be received by the Agency in a format conforming to SPA 1143 no later than 45 days after the date of the letter of notification. Final applications will be reviewed for completeness. Incomplete applications or applications substantially different than the preliminary application will be returned with a statement indicating the reasons

and will not be considered for funding. Remaining applications will be funded based on the priorities and availability of grant funds. Receipt of a letter of notification by an applicant does not guarantee that a grant will be made to fund the final application.

SPA1143 Final Application Format. The final application shall contain the following elements:

(a) Work Program/Schedule. A work program which contains the following:

(1) A statement of the existing or emerging land use problem which is to be investigated with the grant. This statement should identify how the problem is affecting or will affect the recipient, and the means the recipient is willing to use to alleviate the problem.

(2) A description of the activities which will be undertaken with the grant. The description of activities should identify expected products and should be in sufficient detail to enable the Agency to measure progress and to identify the person responsible for completion of each activity. The description should include expected completion dates, by activity. Each activity should be assigned to a specific staff member or consultant.

(3) A statement identifying the way in which the governing body and the planning commission will improve their capability in land use decision making. A schedule should be included indicating when and how this will be accomplished.

(b) Lead Agency. The grant recipient must identify an organization or an individual as the lead agency for the work program.

(c) Local Share. A detailed statement identifying sources for the local share. The local share may be in cash or in-kind.

(d) Signature/Resolution. The signature of the mayor, chairman of the county board or chairman of the town board. The governing body must transmit the final application to the Agency accompanied by resolution passed at an official meeting of the governing body.

SPA1154 Funding Period. Final applications approved for funding will be funded for one year. Work not completed within the one year period will be considered for funding in the next funding cycle along with other applications under the provisions of SPA1121.

SPA1165 Grant Ratio. The grant shall not exceed 75 percent of the total first year cost. Grants for the second year of a multi-year project shall not exceed 50 percent of the total second year cost. Grants for the third year of a multi-year project shall not exceed 30 percent of the total third year cost.

SPA1176 Content of Contract. The planning grant contract shall be based upon the final application. It shall specify the amount of the grant that shall be awarded to the recipient and shall be effective for a period of not more than one year. It shall include the assurance of the eligible recipient that it will provide the required local share and carry out the work program. For an application made jointly by more than one eligible recipient, only one contract shall be executed on behalf

of all eligible recipients participating in the program. The Agency may grant one extension of not more than 90 days to enable completion of the work program.

SPA1187 Disbursement Schedule. The grant money shall be available to the grant recipient as follows: 50% during the first month of the contract; 40% upon completion of one-half of the work; 10% upon completion of a satisfactory evaluation.

SPA1198 Evaluation. 10% of the grant shall be withheld pending completion of a satisfactory evaluation by the Agency of the work performed. This evaluation shall take place within 30 days of the termination of the contract. The evaluation will include determination of whether:

(a) The local share was contributed,

(b) The work specified in the work program was completed, and

(c) The results have been used by the governing body when making land use decisions.

If the grant recipient does not agree with the findings of the evaluation, it may request a hearing as provided in the administrative procedures act, Minn. Stat. §§ 15.0418 - 15.0426.

SPA12019 Required Reports. The grant recipient shall submit quarterly work progress reports to the Agency on forms provided by the Agency.

SPA1210 Use of Funds. To carry out activities specified in the work program, grant funds may be used to: (1) pay existing staff; (2) Hire new staff; (3) Pay staff of another unit of government under a Joint Powers Agreement; (4) Employ a qualified consultant; (5) Pay other costs associated with the work program such as overhead, rental of space and equipment, purchase of supplies,

printing and publishing. The purchase of equipment, space, land or buildings is not an eligible cost or in-kind contribution. Services rendered by state or federal departments or agencies shall not be used as in-kind contribution. Federal or state funds obtained from another grant program may not be used as in-kind contribution. The applicant must be able to demonstrate that staff or consultants have education and experience necessary to perform the tasks assigned.

SPA122~~1~~1 Records. The grant recipient shall maintain, ~~for~~ on forms supplied by the Agency, records of time spent by staff on each task identified in the contract.

SPA123~~2~~2 Deviations. No grant funds may be used to finance deviations from the contract unless such deviations are approved by the Agency. No grant funds may be used to employ a consultant not specified in the contract unless approval is given by the Agency.

SPA124~~3~~3 Multi-Year Programs. Multi-year work programs may be submitted. Receipt of a grant for the first year is not a guarantee that a grant will be received for the remaining years. Multi-year work programs will be funded one year at a time. Each subsequent year of the work program will be evaluated along with new applications in the manner prescribed in SPA112~~1~~1.

SPA125~~4~~4 Agency Assistance. Staff from the Agency will be available to assist the grant recipient with the following:

(a) Preparation of the final application;

(b) Selection of consultants;

(c) Conducting of information, training or capability building meetings;

(d) Technical assistance during the contract period.

~~SPA-126 SPA-101-through-SPA-126-shall-apply-to-the-distribution-of~~

~~$1,100,000 of the funds appropriated by laws of Minn. 1976, Chapter 167, less the amount properly expended by the State Planning Agency for administration, and shall apply, to the degree possible, to the distribution of any further funding appropriated by the legislature for similar purposes.~~

SPA1275 Funds appropriated for grants for Critical Areas Planning purposes by laws of Minn. 1976, Chapter 167, and any future funding for such grants appropriated to the State Planning Agency, shall be distributed to those public bodies authorized by ~~laws, pursuant to~~ such acts, in accordance with the planning requirements contained in the recommendations of the MEQC made upon findings of fact based upon the evidence submitted at the public hearing ~~required for the recommendation for designation of a critical area~~, and as further adopted by the Governor, and the following guidelines:

(a) No grants for preparing critical area plans and regulations shall be made for projects or portions of projects which go beyond the scope of the procedures required by the critical areas planning process.

(b) No grants for preparing critical area plans and regulations shall be made to units of government for any plans and regulations or portions of plans and regulations prepared prior to the designation of the critical area by the Governor.

(c) No grants for preparing critical area plans and regulations shall be made to units of government which cannot demonstrate a need for such funds occasioned by inadequate financial and personnel resources.

(d) All other available funding from other units of government shall be considered when determining the amount of the grants for the critical areas planning process under these regulations.

(e) The State Planning Agency reserves the right to award grants on a pro rata basis based upon demonstrated need, in the event that the funds available are not sufficient to cover such demonstrated needs and the estimated funds needed for other critical areas for which a notice of hearing has been issued pursuant to MEQC 53(e) at the time of distribution.

RECEIVED
MAY 27 1976
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Adoption of Rules of the State Planning Agency Governing Distribution of Grants For Land Use Planning Pursuant to Laws of Minn. 1976, Chapter 167.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned proposed rules be held in Room D, Veterans Service Building, 20 W. 12th Street and Columbus Avenue, St. Paul, on June 22, 1976 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

Dated this 14 day of May, 1976.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

STATE OF MINNESOTA

STATE PLANNING AGENCY

COUNTY OF RAMSEY

RECEIVED
MAY 27 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules of the State Planning Agency Governing Distribution of Grants For Land Use Planning Pursuant to Laws of Minn. 1976, Chapter 167.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room D, Veterans Service Building, 20 W. 12th Street and Columbus Avenue, St. Paul on June 22, 1976 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted by mail to Howard Kaibel, Jr., Room 300, 1745 University Avenue, St. Paul, Minnesota, Telephone No. 296-8107 either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would govern the distribution of grants to cities, counties and towns for the purpose of land use planning and implementation. The proposed rules contain a system for establishing priorities, prescribe eligible and ineligible activities and establish a format and schedule for preliminary and final applications. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Office of Local and Urban Affairs, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Laws of Minn. 1976, Chapter 167. A "statement of need" explaining why the agency feels the proposed rules are necessary will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, Subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Dated this 14 day of May, 1976.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

PROPOSED RULES
LAND USE PLANNING GRANT PROGRAM

Preamble. The authority to make land use decisions has been delegated by the State to units of local government (M.S. 394.21 f; M.S. 462.351 f; 366.182). The complexity of land use decisions has increased, and the legislature has imposed mandatory land use planning and implementation responsibilities (shoreland and flood plain management, critical areas, and others) on units of local government. The legislature established this grant program to aid local units that lack financial and staff capability and experience in making land use decisions.

Grants will be made to units of local government to employ staff or contract with other public bodies or qualified consultants. This additional personnel will be used to develop solutions to complex land use problems and to assist in satisfying other required land use planning and implementation programs. This process is designed to improve the land use decision-making capability of local government.

SPA101 Authority. The State Planning Agency is authorized to adopt rules necessary to carry out the Land Use Planning Grant Program pursuant to Minn. Laws, 1976, Chapter 167.

SPA102 Definitions. The following terms as used in these regulations shall have the following meanings:

(a) "Act" means the Minnesota Land Use Planning Grant Act, Minn. Laws 1976, Chapter 167.

(b) "Agency" means the State Planning Agency.

(c) "Eligible recipient" means a city, county, town or any combination of such units. A city of the first class may apply for a grant to assist neighborhood organizations to do land use and related planning.

(d) "Land Use Planning" means the process by which units of local government consider alternative uses of land. The purpose of land use planning is to foster a compatible arrangement of uses on the land; to provide suitable locations of sufficient size for such diversified uses as housing, business, agriculture and recreation; and to maintain a high quality environment. The basic steps in the process are: (1) Examine characteristics of the land and related factors that determine potential future uses. (2) Examine alternative uses of the land which are consistent with state and local policies and the physical environment. (3) Select the most desirable alternative. (4) Develop and use appropriate actions to carry out the selected alternative. Examine the results of the actions to determine whether

they are in fact achieving the selected alternative and are not producing undesirable results.

(e) "Neighborhood Organizations" means those organizations recognized by the city government for planning and community development purposes, in neighborhoods with boundaries officially determined by the city.

(f) "In-kind" means 1) salary and cost of fringe benefits of the grant recipient staff working on activities funded by the grant, 2) increases in overhead resulting from carrying out activities funded by the grant.

SPA103 Applicability. These rules apply to that portion of the appropriation which is available for grants to local governments outside the metropolitan area as defined in M.S. Sect. 473.02 and Chapter 127, Laws 1976, Sec.2, Subd. 7. See Sect. 6 of the Act.

SPA104 Purpose. The purpose of the Land Use Planning Grant Program is to provide financial assistance to eligible recipients to assist in solving land use and related problems and to improve the recipient's ability to resolve similar future problems.

SPA105 Eligible Activities. The following are eligible activities:

(a) Land use planning or implementation activities

that will result in the management of land use problems created by:

(1) rapid population or economic growth or decline;

(2) potential development in environmentally sensitive areas;

(3) the addition or elimination of a major state or federal facility.

(b) Analysis and preparation of plans to preserve agricultural land;

(c) Modification or preparation of plans or land use controls made necessary by:

(1) designation of a wild and scenic river;

(2) flood plain standards;

(3) shoreland management standards;

(4) other similar legislative action.

SPA106 Ineligible Activities. The following are ineligible:

(a) Activities which are more detailed than necessary to provide guidance in the management of land use problems, (for example, architectural drawings, site designs, engineering specifications);

(b) Activities which are unrelated to the management of the land use problem;

(c) Activities which are being carried out by the applicant;

(d) Activities for which funding is readily available from other sources.

SPA107 Application Procedure. The application for land use planning grant assistance shall be submitted in two stages: Preliminary and final. Assistance in the preparation of the final application will be available from the Agency. The grant shall not pay any cost incurred by the applicant prior to approval of the grant.

SPA108 Multi-jurisdictional Applications. A land use problem may affect more than one unit of government. For problems of this kind, one application should be made jointly by all affected units of government.

SPA109 Preliminary Application. A preliminary application shall be submitted to the Agency to determine eligibility and priority. The preliminary application shall be in the form and manner prescribed by the Agency and shall contain the information required by the Agency including at least the following:

(a) The name of the unit of local government making the application;

(b) A brief statement of the land use problem for which assistance is sought;

(c) A brief statement of the results which are hoped to be achieved through use of the assistance;

(d) A list of the activities which will be carried out with the assistance;

(e) A statement identifying the sources for the local share (the local share may be either cash or in-kind);

(f) The total estimated cost and the amount of assistance being sought;

(g) A list of existing available data which could be used to help analyze the problem;

(h) A copy of a resolution transmitting the preliminary application to the Agency. The resolution must be passed at an official meeting of the governing body.

SPA 110 Preliminary Application Due Date. Preliminary applications shall be submitted semiannually not later than January 1 and July 1, except that during Fiscal Year 1977 there shall be only one due date for preliminary applications and that shall be 60 days after adoption of these rules.

SPA 111 Preliminary Application Review. The preliminary application shall be submitted to the appropriate Regional Development Commission for review and comment at least 45 days before the date on which applications are due in the Agency. Regional Development Commission may

waive this requirement. Within 5 days of the time a preliminary application is submitted to the Regional Development Commission the applicant shall forward a copy of it to the Agency. The Regional Development Commission shall return the preliminary application with comments to the applicant in sufficient time to allow the applicant to submit the preliminary application to the Agency by the due date. Failure of the Regional Development Commission to complete its review of the preliminary application within 45 days shall be considered approval of the application by the Regional Development Commission, unless the applicant and the Regional Development Commission agree to an extension of the 45 day period. The applicant shall submit the preliminary application with the Regional Development Commission's comments to the Agency on or before the due date. The Regional Development Commission may submit to the Agency a list of applications from the region arranged in order of priority established by the Regional Development Commission. The Agency shall consider the Regional Development Commission's comments and priorities when reviewing the preliminary application.

SPA 112 Application Review and Priority Setting. The Agency shall have 30 days to review all preliminary applications. Incomplete and ineligible applications will be returned

to the applicant with a statement citing the reasons, and shall not be considered for funding.

The remaining applications will be assigned a priority as follows:

1st Priority - Those preliminary applications which identify existing or emerging land use problems resulting from two or more of the following:

a) rapid population or economic growth or decline;

b) potential development in an environmentally sensitive area;

c) the addition or elimination of a major state or federal facility.

2nd Priority -Those preliminary applications which identify existing or emerging land use problems resulting from at least one of a) b) or c) above.

3rd Priority Those preliminary applications which analyze and prepare plans to preserve agricultural land.

Within each priority the application will be ranked according to the magnitude of the problem.

Based on the priorities and availability of grant funds, final applications will be requested by the agency through a letter of notification. The appropriate Regional Development Commission will be notified of the action taken on preliminary applications.

SPA 113 Final Application. The final application may be submitted by an applicant that has received a letter of notification. Final application shall be submitted to the Agency as soon as possible after receipt of the letter of notification to prepare a final application. All final applications must be received by the Agency in a format conforming to SPA 114 no later than 45 days after the date of the letter of notification. Final applications will be reviewed for completeness. Incomplete applications or applications substantially different than the preliminary application will be returned with a statement indicating the reasons and will not be considered for funding. Remaining applications will be funded based on the priorities and availability of grant funds. Receipt of a letter of notification by an applicant does not guarantee that a grant will be made to fund the final application.

SPA 114 Final Application. The final application shall contain the following elements:

(a) Work Program/Schedule. A work program which contains the following:

(1) A statement of the existing or emerging land use problem which is to be investigated with the grant. This statement should identify how the problem is affecting or will affect the recipient, and the means the recipient is willing to use to alleviate the problem.

(2) A description of the activities which will be undertaken with the grant. The description of activities should identify expected products and should be in sufficient detail to enable the Agency to measure progress and to identify the person responsible for completion of each activity. The description should include expected completion dates, by activity. Each activity should be assigned to a specific staff member or consultant.

(3) A statement identifying the way in which the governing body and the planning commission will improve their capability in land use decision making. A schedule should be included indicating when and how this will be accomplished.

(b) Lead Agency. The grant recipient must identify an organization or an individual as the lead Agency for the work program.

(c) Local Share. A detailed statement identifying sources for the local share. The local share may be in cash or in-kind.

(d) Signature/Resolution. The signature of the mayor, chairman of the county board or chairman of the town board. The governing body must transmit the final application to the Agency accompanied by resolution passed at an official meeting of the governing body.

SPA 115 Funding Period. Final applications approved for funding will be funded for one year. Work not completed within the one year period will be considered for funding in the next funding cycle along with other applications under the provisions of SPA 112.

SPA 116 Grant Ratio. The grant shall not exceed 75 percent of the total first year cost. Grants for the second year of a multi-year project shall not exceed 50 percent of the total second year cost. Grants for the third year of a multi-year project shall not exceed 30 percent of the total third year cost.

SPA 117 Content of Contract. The planning grant contract shall be based upon the final application. It shall specify the amount of the grant that shall be awarded to the

recipient and shall be effective for a period of not more than one year. It shall include the assurance of the eligible recipient that it will provide the required local share and carry out the work program. For an application made jointly by more than one eligible recipient, only one contract shall be executed on behalf of all eligible recipients participating in the program. The Agency may grant one extension of not more than 90 days to enable completion of the work program.

SPA 118 Disbursement Schedule. The grant money shall be available to the grant recipient as follows: 50% during the first month of the contract; 40% upon completion of one-half of the work; 10% upon completion of a satisfactory evaluation.

SPA 119 Evaluation. 10% of the grant shall be withheld pending completion of a satisfactory evaluation by the Agency of the work performed. This evaluation shall take place within 30 days of the termination of the contract. The evaluation will include determination of whether:

(a) The local share was contributed,

(b) The work specified in the work program was completed, and

(c) The results have been used by the governing body when making land use decisions.

SPA 120 Required Reports. The grant recipient shall submit

quarterly work progress reports to the Agency on forms provided by the Agency.

SPA 121 Use of Funds. To carry out activities specified in the work program, grant funds may be used to: (1) Pay existing staff; (2) Hire new staff; (3) Pay staff of another unit of government under a Joint Powers Agreement; (4) Employ a qualified consultant. The purchase of equipment, space, land or buildings is not an eligible cost or in-kind contribution. Services rendered by state or federal departments or agencies shall not be used as in-kind contribution. Federal or state funds obtained from another grant program may not be used as in-kind contribution. The applicant must be able to demonstrate that staff or consultants have education and experience necessary to perform the tasks assigned.

SPA 122 Records. The grant recipient shall maintain, for forms supplied by the Agency, records of time spent by staff on each task identified in the contract.

SPA 123 Deviations. No grant funds may be used to finance deviations from the contract unless such deviations are approved by the Agency. No grant funds may be used to employ a consultant not specified in the contract unless approval is given by the Agency.

SPA 124 Multi-Year Programs. Multi-year work programs may be

submitted. Receipt of a grant for the first year is not a guarantee that a grant will be received for the remaining years. Multi-year work programs will be funded one year at a time. Each subsequent year of the work program will be evaluated along with new applications in the manner prescribed in SPA 112.

SPA 125 Agency Assistance. Staff from the Agency will be available to assist the grant recipient with the following:

(a) Preparation of the final application;

(b) Selection of consultants;

(c) Conducting of information, training or capability building meetings;

(d) Technical assistance during the contract period.

SPA 126 SPA 101 through SPA 126 shall apply to the distribution of $1,100,000 of the funds appropriated by Laws of Minn. 1976, Chapter 167, less the amount properly expended by the State Planning Agency for administration; and shall apply, to the degree possible, to the distribution of any further funding appropriated by the legislature for similar purposes.

SPA 127 Funds appropriated for grants for Critical Areas Planning purposes by laws of Minn. 1976, Chapter 167, and any future funding for such grants appropriated to the State Planning Agency, shall be distributed to those public bodies authorized by laws, pursuant to the recommendations of the MEQC made upon findings of fact based upon the evidence submitted at the public hearing required for the recommendation for designation of a critical area, and the following guidelines:

(a) No grants for preparing critical area plans and regulations shall be made for projects or portions of projects which go beyond the scope of the procedures required by the critical areas planning process.

(b) No grants for preparing critical area plans and regulations shall be made to units of government for any plans and regulations or portions of plans and regulations prepared prior to the designation of the critical area by the Governor.

(c) No grants for preparing critical area plans and regulations shall be made to units of government which cannot demonstrate a need for such funds occasioned by inadequate financial and personnel resources.

(d) All other available funding from other units of government shall be considered when determining the amount of the grants for the critical areas planning process under these regulations.

(e) The State Planning Agency reserves the right to award grants on a pro rata basis based upon demonstrated need, in the event that the funds available are not sufficient to cover such demonstrated needs and the estimated funds needed for other critical areas for which a notice of hearing has been issued pursuant to MEQC 53(e) at the time of distribution.

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Adoption of Rules of the State Planning Agency Governing Distribution of Grants For Land Use Planning Pursuant to Laws of Minn. 1976, Chapter 167.

STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules of the State Planning Agency.

The need to adopt these rules arises because of Legislative mandate, Laws of Minnesota, 1976, Chapter 167, Section 2, and the need for an orderly process for the distribution of grants to local units of government by the State Planning Agency for land use planning purposes.

Dated: Sept 10, 1976

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

RECEIVED
MAY 27 1976
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

STATE PLANNING AGENCY

COUNTY OF RAMSEY

In the Matter of the Proposed)
Adoption of Rules of the State)
Planning Agency Governing Dis-) STATEMENT OF NEED
tribution of Grants For Land)
Use Planning Pursuant to Laws)
of Minn. 1976 Chapter 167)

The above-captioned rules are not amendments to existing rules of the State Planning Agency.

The need to adopt these rules arises because of Legislative Mandate, Minn. Laws 1976, Chapter 167, Section 2.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel, Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

RECEIVED
MAY 27 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules of the State Planning Agency Governing Distribution of Grants For Land Use Planning Pursuant to Laws of Minn. 1976 Chapter 167.

AFFIDAVIT OF MAILING

June Jacobs, being first duly sworn, deposes and says:

That on the 20th day of May, 1976, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

June Jacobs

Subscribed and sworn to before me this 20th day of May, 1976.

Joanne Herbenson
Notary Public

JOANNE HERBENSON
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the State Planning Agency Governing Distribution of Grants For Land Use Planning Pursuant to Laws of Minn. 1976, Chapter 167.

CERTIFICATE

I hereby certify that the attached 481 labels and one sheets constitute the complete list of persons, associations, and other interested groups who as of 1:30 o'clock P .M. this 18th day of May, 1976, have requested pursuant to M.S. 1971, Section 15.0412, Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Ceil Dixon

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Adoption of Rules of the State Planning Agency Governing Distribution of Grants For Land Use Planning Pursuant to Laws of Minn. 1976, Chapter 167.

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Ronald E. Kaliszewski, being duly sworn on oath deposes and says:

1) That he is an employee of the State Planning Agency of the State of Minnesota.

2) That on the 18 day of May, 1976, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 18 day of May, 1976, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Ronald E. Kaliszewski

Subscribed and sworn to before me this 18th day of May, 1976.

Joanne Herbenson
Notary Public

JOANNE HERBENSON
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Adoption of Rules of the State Planning Agency Governing Distribution of Grants For Land Use Planning Pursuant to Laws of Minn. 1976, Chapter 167.

FINDINGS OF FACT

The above-entitled matter came on for hearing before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners pursuant to an order for such hearing made by the Director of the State Planning Agency. Such hearing was held on June 22, 1976, on the Fifth Floor of the Veterans' Service Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1974) and all applicable rules therefore was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having considered all of the evidence adduced and upon the records, files, proceedings and the Reports of the Hearing Examiner and the Acting Chief Hearing Examiner, the Director of the State Planning Agency hereby approves and adopts the Findings of Fact and Conclusions of the Hearing Examiners as contained in their reports.

Dated: Sept. 9, 1976

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

PLAN-76-001-HK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE PLANNING AGENCY
OFFICE OF LOCAL AND URBAN AFFAIRS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE PLANNING AGENCY GOVERNING DISTRIBUTION OF GRANTS FOR LAND USE PLANNING PURSUANT TO LAWS OF MINNESOTA 1976, CHAPTER 167.

REPORT OF THE ACTING CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 22, 1976, before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. §15.052, Subd. 3, was issued to the State Planning Agency on August 16, 1976; and

WHEREAS, the State Planning Agency has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the State Planning Agency has submitted said rules to the Acting Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, all of the changes made by the agency with the exception of those in new rule 125 are adequately dealt with in the Hearing Examiner's findings or are patently insubstantial typographical modifications. I have carefully considered the changes in new rule 125 and the ramifications thereof. I find them to be insubstantial in that they simply clarify the legal role of the Governor which could not be altered in these rules in any case.

NOW, THEREFORE, upon receipt of this Report, the State Planning Agency has the responsibility of submitting the complete hearing record and the rules as adopted by the agency to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 3rd day of September, 1976.

DUANE R. HARVES
Acting Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE PLANNING AGENCY
OFFICE OF LOCAL AND URBAN AFFAIRS

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE STATE PLANNING AGENCY)
GOVERNING DISTRIBUTION OF GRANTS FOR) REPORT OF HEARING EXAMINER
LAND USE PLANNING PURSUANT TO LAWS OF)
MINNESOTA 1976, CHAPTER 167.)

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Office of Hearing Examiners on June 22, 1976, at 9:00 a.m., in Room D of the Veterans Service Building, Saint Paul, Minnesota.

Donald Kannas, Special Assistant Attorney General, Capitol Square Building, Saint Paul, Minnesota, appeared as counsel for the State Planning Agency. Director James Solem and Assistant Director Ron Kaliszewski testified on behalf of the Agency. The hearing continued until all persons or representatives of interested persons or organizations desiring to be heard were heard. The record was closed after allowing 20 days for submission of written comments at the end of the day on July 12, 1976.

Pursuant to Minnesota Statutes Section 15.052, subdivision 3(1975 Supplement), this Report will include Findings of Fact, Conclusions and Recommendations. The State Planning Agency and the Office of Hearing Examiners will make a copy of this Report available for review to any interested person upon request. Copies of the Report will be furnished at a nominal cost.

The Agency shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner, pursuant to HE 108, no earlier than ten days subsequent to the receipt of this Report. It shall include the rules as originally proposed, and the rules as proposed for adoption in final form. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his Report to the Agency on the issue of substantial changes in the rule within ten calendar days. The Agency will be responsible for filing the rules with the Attorney General.

After due and careful consideration of all evidence, together with all records, files and proceedings, the Hearing Examiner hereby issues

and files the following Findings of Fact, Conclusions and Recommendations.

FINDINGS OF FACT

1. That on May 18, 1976, the Board filed the following documents with the Chief Hearing Examiner:

(a) A proposed Order for Hearing;

(b) A proposed Notice of Hearing with the proposed rules attached; and

(c) A statement of the number of persons expected to attend and estimated length of hearing.

2. That on May 20, 1976, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

3. That on May 27, 1976, the Agency filed with the Office of Hearing Examiners the following documents:

(a) The Order for Hearing;

(b) The Notice of Hearing as mailed;

(c) The Affidavit of Receipt of the Secretary of State's list;

(d) The Affidavit of Mailing;

(e) The Statement of Need;

(f) The names of agency personnel representing the Agency;

(g) A Statement of Evidence.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

4. That the legislature directed the adoption of rules such as those proposed in Laws of Minnesota, 1976, chapter 167, section 2 which provides as follows:

> The State Planning Agency shall determine priorities pursuant to section 1, and shall promulgate rules for the submittal and review of applications hereunder in accordance with the provisions of Minnesota Statutes, chapter 15.

5. That the agency made no affirmative presentation of facts, or otherwise even attempted by means of argument, to demonstrate the need for the preamble to the rules or the reasonableness of the language contained therein. The proposed language was criticized as implying that governmental units with existing programs were not intended to be benefited by the act (Record 22-23, Comment A) and agency representatives conceded that insofar as that interpretation of the language is likely

it should be revised (Record 26-27). To the degreee to which such a preamble merely repeats exact statutory language, it serves no useful purpose or at least none has been asserted.

6. That the Agency did not endeavor by way of argument or affirmative presentation of facts to demonstrate the need for and reasonableness of stating the statutory authority for the rule as proposed in rule 101. This Examiner does independently know by way of personal experience that such a reference in the opening section of rules is a very useful convenience and as such, is a reasonable inclusion. If the Agency deems the personal experience as related and contained in this Finding to be sufficient documentation for the adoption of the rule, it should be further noted that the most useful and convenient statutory reference to this Examiner is the codification number as opposed to chapter number in the session laws.

7. That no sufficient case has been made on the record for the inclusion of the definition of "act" contained in proposed rule 102(a). A survey of the proposed rules does not disclose use of that term anywhere else in the proposed rules. The three places identified where reference is made to the act spell out that reference and under such circumstances, it will actually shorten the rules to eliminate the definition.

8. That the remaining definitions are consistent with the statute, and generally necessary to shorten, explain, simplify and properly implement that legislation. As such, these definitions are found to be reasonable. Section (d) "land use planning" is further specifically found to be reasonable, supported by expert testimony uncontradicted that it is based upon generally accepted planning practice (Exhibit 4, p. 1). Similarly, the substance of section (e) "neighborhood organizations" is reasonable as based upon HUD rules. The record contains no opposition to these proposals.

9. That proposed rule 103 explaining applicability is necessary to inform readers that the rules do not apply to Metropolitan area grant distributions which will be made by the Metropolitan Council. As such, it is consistent with the statute and reasonable.

10. That the Agency made no affirmative presentation of facts or arguments to demonstrate the need for proposed rule 104 setting forth the purpose of the program, nor is there any basis in the record for concluding that the particular language is reasonable. To avoid repe-

tition, the substance of Finding Number 5 regarding the proposed preamble is herein incorporated by reference and made applicable to this proposed rule. (See Record 34 and Comment D)

11. That proposed rule 105 outlining eligible activities is needed to avoid unnecessary confusion and ineligible applications by calling potential applicants attention to the program limitations. The language is reasonable and was not criticized.

12. That proposed rule 106 setting forth ineligible activities is necessary to give potential applicants guidance on the thrust or scope of the Agency's interpretation of its obligation to properly conserve grant funds to maximize accomplishment of the program's purpose. The substantive provisions of the rule such as avoiding unnecessarily detailed activities and activities for which funding is readily available, constitute an eminently reasonable elaboration of a clear legislative intent. The only criticism this rule received is discussed in written comments from the Association of Minnesota Counties (hereinafter AMC) (Comment A) urging the Agency to clarify that funds may be used to expand existing activities. The Agency concurred with the need to include such clarification to avoid such a misinterpretation when the problem was discussed at the hearing (Record 27).

13. That the two-stage application procedure outlined in proposed rule 107 is necessary to simplify the burden on local government by limiting the time and resources devoted to the final application stage to likely recipients and to give all persons some idea of the likely relationship of funds to applications. The only criticism to this approach was advanced by the Minnesota Chapter of the American Institute of Planners (hereinafter MAIP). The approach is modeled after the Agency's LAWCON recreation grant program which was not criticized. MAIP's objections were initially shared by Mankato Planning Director, Phil Sieber, who testified that the LAWCON program works well, "if that's your model, then we would be very happy." (Record 58) It is specifically found to be reasonable.

Similarly reasonable is the proposed provision limiting funds and planning agency assistance to the final stage and to post-approval expenses, in accord with the legislative intent that the agency maintain control over and conservation of the limited funds. The rule is necessary to inform potential applicants that pre-approval and preliminary application

costs will be a local expense.

14. That the provisions for joint application in proposed rule 108 are necessary to avoid the unnecessary waste and duplication of both local and state effort and it is a reasonable way to accomplish such economies. It is further reasonable in that it will promote joint cooperative solutions of problems which affect more than one unit of local government, an aim which was recognized by the legislature in specifically providing for joint contracting in the statute.

15. That the format provided in proposed rule 109 for preliminary applications is simple, straightforward and was not criticized. The data sought is necessary to properly determine which local governmental units are eligible for final application and eliminate other potential recipients. The data should also be sufficient to determine which of the eligible applicants sufficiently understand land use problems that they would be able to spend grant money intelligently. It is specifically found to be reasonable in that it will promote the understanding of land use problems by local communities applying (regardless of whether they ultimately receive aid) and will enable the Agency to carry out its statutory responsibility to determine eligibility and priority.

16. That the due date for preliminary applications provided in proposed rule 110 is essential to group those applications for proper comparison. This was the only way suggested on the record of accomplishing this legislative purpose and is an eminently reasonable way of doing so. The only criticism of this rule came from MAIP planning consultants who objected to forcing local governments to conform to a uniform state schedule. It is significant that this criticism was not joined in by organizations representing local governments or even by any individual governmental unit. The real inconvenience of a uniform due date is to these planning consultants. Insofar as this inconvenience of the rule may have the effect of limiting consultant assistance in the preparation of applications, it will limit the disadvantage to communities unable to afford such assistance.

17. That the provisions of proposed rule 111 setting forth regional development commission review procedures are necessary and reasonable. A complaint by one witness at the hearing that such review would cause dissension has been carefully considered and rejected. Such

review is mandated by the statute. Lawmakers undoubtedly realized in providing for it in this rule that effective regional decision making, even review and comment, of necessity involves dissension and nothing in the rule would tend to unnecessarily aggravate such unavoidable conflict. On the contrary, the provision for advance waiver of review will allow individual regions the option of avoiding such dissension. This waiver provision is not inconsistent with the statute which merely requires submission to the region and is consistent with the statutory provision equating no action with approval. The requirement that regions forward a copy to the Agency within five days of submission is necessary to give advance warning of application volume in order to assure proper planning for efficient administration. Changing the title to "regional development commission review" would more accurately reflect the content of this rule. This would consequently be a patently insubstantial revision beneficial to the public.

18. That the provisions of proposed rule 112 delineating Agency application review procedures and priorities are necessary to spell out the procedures which will be used by the Agency to carry out the legislatively mandated prioritizing, to give notice of those procedures, and to avoid insofar-as-possible future charges of Agency arbitrariness. It is reasonable to rank applications according to the number of times a priority factor occurs and no one criticized this aspect of the proposed rule. The Agency adequately documented the reasonableness of the entire proposal.

Criticism centered around priorities, even though such priorities could not have been more clearly established by the legislature itself. The statute provides "the State Planning Agency shall give priority when granting funds to those areas that show a special need according to the provisions of clauses (a) and (b)." Because so much of the reaction to the proposed rules dealt with these priorities, it is useful to reproduce those statutory provisions in these findings before going on to discuss specifics:

> (a) To prepare and implement plans which are required for certain areas by law or by designation as a critical area under Minnesota Statutes, chapter 116G.
>
> (b) To prepare and implement plans which the unit of government is authorized by law to undertake for the management of problems resulting from (1) rapid population or economic growth or decline; (2) potential development in environmentally sensitive areas including but not limited to flood plains, wild and scenic rivers, and shorelands; and (3) the addition or elimination of a major state or federal facility;

The statute goes on to state two other purposes for which grant money may be spent which do not get any priority, clause (c) dealing with neighborhood organizations in cities of the first class and clause (d) dealing with the preservation of agricultural land.

From the above-quoted statute, it should be obvious that the "third priority" in the proposed rule clearly exceeds the Agency's statutory authority as it assigns agricultural preservation a priority over neighborhood organizations. The agency indicated at the hearing that this may be an error and this is supported by their justification which says that "the third priority includes all other applications". This error could be eliminated by adding neighborhood organizations to thie third priority category or perhaps more simply by withdrawing the third priority altogether as exceeding statutory authority.

Some persons testifying sought higher priority or earmarking of funds for the preservation of agricultural land, but one of these proponents admitted that this would be contrary to the statute's explicit assignment of priority to the factors listed in clauses (a) and (b). As spelled out above, the statutory priorities explicitly exclude agricultural preservation. It is conceivable that the entire funding, at least during the first year of the program, might be used up on priority projects for clauses (a) and (b). Under those circumstances, any earmarking of funds for agriculture would be contrary to this legislative mandate. The fact that the legislature did earmark $300,000 for critical areas projects suggests that they were aware of and rejected this alternative in the case of agricultural preservation.

Similarly, the Department of Natural Resources suggested giving special priority to planning occasioned by wild and scenic river designation. It is clear that from the above-quoted statute that wild and scenic rivers are to be assigned co-equal priority with flood plains, population growth, etc. In view of this clear statutory language, there is serious question as to whether the agency could take wild and scenic river problems from among all those to be assigned priority and in effect, assign a special priority. Indeed, the fact that the legislature earmarked funds and established 100% state funding in the case of critical areas (as opposed to 75% for other grants), creates a strong legal presumption that this is the only "more priority than other priorities" intended by them and that this is the only way such special prioritizing should be

accomplished. Legal questions aside, there was no affirmative presentation of facts to justify such special prioritizing other than the statement that some of these wild and scenic designations have occurred and others "will probably" occur. This kind of undocumented conclusion is insufficient to demonstrate the need for or reasonableness of such a rule. Further, in addition to the problems of legality and factual justification, this recommendation would clearly be a substantial change in that it would potentially alter significantly the funds available to other communities and would therefore have to be considered only after new notice and hearing.

The same problems are suggested by the partially contradictory suggestion of the DNR in the same comment that special priority be given to smaller and/or more inexperienced and/or new units of government. Without reiterating, it should be obvious that this suggestion presents the same problems of legality, factual documentation and substantial change. Such suggestion would be contrary to the explicit mention of first class cities in the act (which in the case of these rules applying to outstate Minnesota means Duluth). As suggested at the hearing, any such prioritizing which would act to penalize progressive communities that have already been devoting local resources to land use planning and potentially discourage such initiatives in the future, is directly opposite the basic intent of the legislation (Record 16).

Mr. Tooker's contrary suggestion (Record 14 et seq.) that the rules be changed to reward current initiatives by giving some kind of priority to communities with an existing planning budget, without again reiterating, also presents the same problems of legality, factual documentation and substantial change. The objections expressed by Mr. Holtz of the Township Officers Association are indicative of the substantial change problem (Record 20).

The actual procedures to be used were not criticized and they are specifically found to be reasonable and necessary. The 30-day Agency deadline in particular will aid local timing and prevent potentially prejudicial delays.

19. That spelling out the final application process is obviously necessary and that which is proposed is reasonable. There was no suggestion that the 45-day cutoff ought to be longer or shorter and tying

that cutoff to the notification letter will speed up the process in the event that preliminary review is completed prior to the 30-day proposed Agency deadline. Return of incomplete or substantially different applications will avoid unfair or prejudicial delay or advantage to any applicant.

20. That detailing the contents of the final application as is proposed in rule 114 is necessary to inform potential applicants. Content uniformity is further essential to standarizing and simplifying comparability. The specific elements proposed were not criticized and a prima facia case has been made by the Agency for their reasonableness without exception. The only criticism of these elements was a MAIP entreaty that the lead Agency identified include a professional planner responsible for overseeing the operation. This general subject is dealt with fully and more appropriately in Finding Number 27 on proposed rule 121, which is incorporated herein by reference. It is sufficient to note here that no attempt has been made at establishing a factual case for this particular proposed restriction which would clearly be substantial in that it would potentially require every unit to hire a planning consultant as a grant condition.

21. That requiring annual completion of projects in most cases, as is proposed in rule 115, is found to be necessary for sound fiscal programming and grant management. Combined with the 1-time extension in proposed rule 117 and the recognition of special situations in proposed rule 124 which provides for multi-year projects, this proposed rule is eminently reasonable. It received no criticism.

22. That the maximum 75 percent state contribution during the first year of any project, contained in proposed rule 116 setting forth grant ratios, is established in the statute and could not be varied by these rules. The reasons advanced for decreasing the maximum state contribution in subsequent years of multi-year projects are persuasive. The Duluth Planner's urging that the Agency should retain flexibility in subsequent years by retaining a 75% maximum is properly rejected, as the program was not intended as a continuing subsidy for planning for a few units of government, which would be permitted by this suggestion. The thrust of the rules, with recognized but discouraged exceptions, is to maximize distribution and the consequent spread of newly-created local planning capability. The proposed rule is reasonable and necessary.

23. That the use of contracts, as is proposed in rule 117, is standard procedure in shared grant programs, necessary for legal disbursement of funds. The content specified properly focuses responsibility and liability. Combined with the discretionary 90-day extension, the rule is reasonable. It received no criticism.

24. That there is no contradiction in the record to the Agency contention that the disbursement schedule established by proposed rule 118 comports with "standard grant management technique". Some specification of Agency responsibility in this regard is necessary and the "front end" 50 percent, "half way" 40 percent and "tail-end-evaluation" 10 percent is reasonable.

25. That no one questioned the adequately documented need for evaluation provided for in proposed rule 119. In setting forth reviewable standards and reserving flexibility, it is found to be reasonable. The only negative comment was the AMC (County Association) query as to how the Agency will determine whether "the results have been used by the governing body when making land use decisions", asserting that it "would seem to be rather difficult to determine". This comment shows foresight into the potential conflict likely to be generated by a state-local disagreement over plan utilization. It concedes that such evaluation is necessary in light of the statutes emphasis on "decision making" and "implementation". Conceding that, the rule appropriately provides explicit notice that utilization will be part of the evaluation. The "difficulties" of determination may be subject to judicial review under the administrative procedures act depending on whether the determination is a "contested case" which is "required by law" to be determined after an agency hearing. Explicit modification of these rules (which will have the force of law) to require a hearing upon proper application in the event of adverse evaluation would ensure such due process. Such a modification would not in the opinion of this Examiner constitute a substantial change in that it would merely clarify the legal right to review.

26. That there was no opposition to the quarterly reporting requirements established in proposed rule 120 which are reasonable and necessary to ensure that the Agency keeps up to date on the progress of projects.

27. That the last sentence of proposed rule 121 on use of funds, requiring that "the applicant must be able to demonstrate that staff or consultants have education and experience necessary to perform the tasks assigned", generated the most significant disagreement in this proceeding. The MAIP urged that minimum qualifications be spelled out in the rules, suggesting detailed standards such as requiring that at a minimum, persons have a graduate degree in planning from an "AIP recognized" school plus three years experience (two of which must be associated with a person who already meets these training and experience qualifications).

Neither the MAIP nor anyone else made any affirmative presentation of facts to document the need for spelling out such minimum qualifications. No evidence was produced to suggest that most or even any persons not meeting such minimum qualifications are presently doing inadequate planning or that such persons are incapable of carrying out the land use projects likely to be funded. There was no data whatsoever introduced which would tend to support the conclusion that AIP recognition of schools ensures or is even any indication that graduates of such schools are superior to non-graduates. There was no evidence that the apprenticeship kind of experience recommended is so superior to learning-on-one's-own that this should be a basis for disqualifying persons or that perhaps testing might not be devised to certify an occasional exception. Without further belaboring the point, the record does not support the need for or reasonableness of the proposed revision.

Careful consideration by the League of Minnesota Municipalities and AMC led these organizations of potential recipients to oppose the suggested changes strongly. Careful attention to the act supports the conclusion of the county association staff attorney that the proposed delineation would be "contrary to legislative intent". (Comment A) The purpose of the first sentence of the act is to strengthen the "decision-making capability of local government". This implies primary emphasis on the local decision makers as opposed to expert advisors. The act is similarly not intended as a licensing law for the planning profession, an end which should be sought by MAIP directly and not "through the back door" of a local government grant program. As the Municipal League Director concluded, "establishing qualifications for planners was not contemplated by the enactment of this law, and would not be in the best interests of this program." (Comment B)

Finally, the licensing aspects of the MAIP proposal emphasize the degree of substantial change involved over what was originally proposed in the Notice of Hearing. Members of the profession who have only two years experience, for example, or who have 30 years experience but no AIP accepted degree (and local governmental units employing such persons) are legally entitled to notice and an opportunity to be heard on a proposal which would disqualify them. Consequently, the Agency should not consider adopting the proposed revisions except after new notice and hearing. Until such time, the existing sentence in the proposed rule is a reasonable way of meeting the basic purpose of assuring that grant funds are spent only for qualified professional assistance.

This sentence and the remainder of the rule are needed to clarify and give notice to the public of the Agency interpretation of the legislative intent to limit funding and in kind contributions to intended purposes, conserving resources for maximum program impact. Insofar as the provisions of the proposed rule are clear, they are reasonable and were not criticized or objected to.

A need for further clarification of this rule is suggested, however, by the DNR recommendation that the rule be amended to specify that overhead, printing "and other costs" are eligible. (Comment C) The rules are (perhaps deliberately) unclear. Allowable use of funds to "employ a qualified consultant" implies that the funds may be used to cover included overhead items ranging from rent to printing. On the other hand, the other eligible uses specified involve compensation of staff only and the distinction specified in the definition of "in kind" in proposed rule 102 between "increases in overhead" and salary and fringe benefits for staff suggests that the agency specifically intends to limit eligibility to salary costs only, some more explicit notice of the intention to apportion consultant's fees is only fair upon final adoption. If the intention is to permit other costs such as printing on a case by case basis, (this was suggested by the Agency representative in answer to a question at the hearing on printing costs, who said "I don't see any reason to exclude those costs in the use of funds" if they are "part of the application which was submitted") the rules should be expanded to give notice of that fact to local officials together with the restrictions, qualifications and considerations involved. Advance written approval of the Agency might be required for example, and considerations to be weighed

in such approval might be spelled out such as the degree to which the expenditure is essential to carrying out the act's purpose and/or the degree to which the local contribution is a new as opposed to surplus committment of resources.

28. That the record keeping required by proposed rule 122 is essential to determine whether the local share complies with the statute. Use of agency forms and time records is a reasonable way of meeting that need. There was no criticism of this proposed rule.

29. That although the use of a contract as provided in proposed rule 117 implies the need for mutual approval of any deviation from that contract, spelling this fact out as is done in proposed rule 123 is necessary and reasonable to avoid any possibility of misunderstanding. No objection was raised on the record to doing so.

30. That proposed rule 124 relating to multi-year programs is necessary to give notice to recipient that project funding will be re-determined annually. As such, it is reasonable and was not criticized.

31. That the delineation of available agency assistance provided in proposed rule 125 is necessary to give local officials full notice of these possibilities so that potential recipients will have equal and complete knowledge to properly plan projects. There is no objection in the record to any kinds of assistance listed, nor any suggestion of additions. The record supports the conclusion that the proposed delineation is reasonable.

32. That to the degree that proposed rule 126 proposes to expand the application of these rules to future legislative appropriations "for similar purposes" "to the degree possible", it excedes the jurisdiction of the delegating legislation and the notice of hearing which states only that the rules "would govern the distribution of grants totally $1,100,000" provided by that act. The agency did not document the need for or reasonableness of such future applications or for the remainder of the rule in light of proposed rule 103, "Applicability".

33. That the provisions of proposed rule 127 detailing the special treatment of critical areas funding are necessary to advise interested persons of the treatment to be accorded such grants. The provisions of the rule which received no criticism on the record all go to conservation and fair apportionment of grant resources and a case has been established

for their reasonableness based on the alleged "likelihood of several designated critical areas".

34. That Pollution Control Agency comments (which were submitted after the hearing and were therefore not subject to any response by other participants) have been carefully considered and rejected. The PCA recommended that the application procedures incorporate a written planning process which "would address the integration of existing federal and state programs regarding land, air, noise, water, energy and other environmental resource management elements." The Examiner's fundamental initial reaction to this proposal is that it appears to assume a local planning sophistication, the very absence of which the act was intended to remedy. There has been no documentation of the need for such revision other than the conclusory allegation that lack of integration is "a major defect" in the present system. No definition is provided in the comment of what "review" by other state agencies is or that such review would be reasonable in that it would be the best or even a good solution for the alleged problem. Assuming that interagency information sharing is valuable, that is that it is "vital that state agencies be informed", there is no consideration on the record of alternative solutions such as devising a system of information sharing without actual review by the numerous potentially affected state agencies such as PCA, EQC, DNR, MMC, Highway Department, etc. There is nothing in the record to suggest that such information sharing would not be pursued or that input of other agencies would be ignored or that there would be any attempt to keep the process of application review, priority setting and approval secret or non-public.

Insofar as the proposal goes beyond information sharing to some kind of interagency review and "sign off" it would appear to involve a substantial change requiring new notice and hearing. Such a proposition by definition involves increased costs and a diversion of a larger portion of grant resources to state and federal purposes as opposed to local planning. Adding the written process, complications might make grant funding less attarctive to smaller units of government already overburdened by paperwork, discriminating in favor of the larger units more capable of dealing with written planning processes. Insofar as the proposal has potential for discouraging application, it would be a substantial different direction if not totally contrary to the purpose of the act of

increased local planning capability.

CONCLUSIONS

1. That the State Planning Agency duly acquired and how has jurisdiction over the within proceeding.

2. That relevant legal and procedural requirements of statute and regulation have been properly complied with.

3. That the rules hereinafter recommended for adoption will properly implement the legislative mandate of chapter 167, Minnesota Laws of 1976.

4. That a clear and compelling need has been demonstrated for the adoption of the proposed rules hereinafter recommended for adoption.

5. That individually and taken together, the rules hereinafter recommended for adoption are a reasonable implementation of the legislature's delegated responsibility.

RECOMMENDATIONS

IT IS HEREBY RECOMMENDED: That the proposed rules of the State Planning Agency be promulgated, approved and adopted excepting only the preamble and rules 101, 102(a), 104 and 126, after attention to possible modifications suggested by the findings in regard to proposed rules 101, 111, 112, 119 and 121.

Dated: August 16, 1976.

HOWARD L. KAIBEL, JR.
Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Adoption of Rules of the State Planning Agency Governing Distribution of Grants For Land Use Planning Pursuant to Laws of Minn. 1976, Chapter 167.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners pursuant to an order for such hearing made by the Director of the State Planning Agency. Such hearing was held on June 22, 1976, on the Fifth Floor of the Veterans' Service Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1974) and all applicable rules therefore was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having considered all of the evidence adduced and upon the records, files, proceedings and the Reports of the Hearing Examiner and the Acting Chief Hearing Examiner, and applicable statutory standards and criteria, and having confirmed the need for the above-mentioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minn. Regs. SPA 101 through SPA 125 are adopted this 7th day of September, 1976, pursuant to authority vested in me by Laws of Minnesota, 1976, Chapter 167, Section 2.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

RULES
LAND USE PLANNING GRANT PROGRAM

SPA101 AUTHORITY. The State Planning Agency is authorized to adopt rules necessary to carry out the Land Use Planning Grant Program pursuant to Minn. Stat. §§ 4.27 to 4.31.

SPA102 DEFINITIONS. The following terms as used in these regulations shall have the following meanings:

A. "Agency" means the State Planning Agency.

B. "Eligible recipient" means a city, county, town or any combination of such units. A city of the first class may apply for a grant to assist neighborhood organizations to do land use and related planning.

C. "Land Use Planning" means the process by which units of local government consider alternative uses of land. The purpose of land use planning is to foster a compatible arrangement of uses on the land; to provide suitable locations of sufficient size for such diversified uses as housing, business, agriculture and recreation; and to maintain a high quality environment. The basic steps in the process are: (1) Examine characteristics of the land and related factors that determine potential future uses. (2) Examine

alternative uses of the land which are consistent with state and local policies and the physical environment. (3) Select the most desirable alternative. (4) Develop and use appropriate actions to carry out the selected alternative. Examine the results of the actions to determine whether they are in fact achieving the selected alternative and are not producing undesirable results.

D. "Neighborhood Organizations" means those organizations recognized by the city government for planning and community development purposes, in neighborhoods with boundaries officially determined by the city.

E. "In-kind" means 1) salary and cost of fringe benefits of the grant recipient staff working on activities funded by the grant, 2) increases in overhead resulting from carrying out activities funded by the grant.

SPA103 APPLICABILITY. These rules (SPA 101 - 125) apply to that portion of the appropriation which is available for grants to local governments outside the metropolitan area as defined in M.S. Sect. 473.02 and Chapter 127, Laws of 1976, Sec. 2, Subd. 7. See Laws of Minnesota 1976, Chapter 167, Sect. 6.

SPA104 ELIGIBLE ACTIVITIES. The following are eligible activities:

A. Land use planning or implementation activities that will result in the management of land use problems created by:

1. rapid population or economic growth or decline;
2. potential development in environmentally sensitive areas;
3. the addition or elimination of a major state or federal facility.

B. Analysis and preparation of plans to preserve and protect agricultural land;

C. Modification or preparation of plans or land use controls made necessary by:

1. designation of a wild and scenic river;
2. flood plains standards;
3. shoreland management standards;
4. other similar legislative action.

D. Land use and related planning done by neighborhood organizations in cities of the first class.

SPA105 INELIGIBLE ACTIVITIES. The following are ineligible:

A. Activities which are more detailed than necessary to provide guidance in the management of land use problems, (for example, architectural drawings, site designs, engineering specifications);

B. Activities which are unrelated to the management of the land use problem;

C. Activities which are being carried out by the applicant, however, the costs associated with the expansion or acceleration of existing activities shall be eligible;

D. Activities for which funding is readily available from other sources.

SPA106 APPLICATION PROCEDURE. The application for land use planning grant assistance shall be submitted in two stages: Preliminary and final. Assistance in the preparation of the final application will be available from the Agency. The grant shall not pay any cost incurred by the applicant prior to approval of the grant.

SPA107 MULTI-JURISDICTIONAL APPLICATIONS. A land use problem may affect more than one unit of government. For problems of this kind, one application should be made jointly by all affected units of government.

SPA108 PRELIMINARY APPLICATION. A preliminary application shall be submitted to the Agency to determine eligibility and priority. The preliminary application shall be in the form and manner prescribed by the Agency and shall contain the information required by the Agency including at least the following:

A. The name of the unit of local government making the application;

B. A brief statement of the land use problem for which assistance is sought;

C. A brief statement of the results which are hoped to be achieved through use of the assistance;

D. A list of the activities which will be carried out with the assistance;

E. A statement identifying the sources for the local share (the local share may be either cash or in-kind);

F. The total estimated cost and the amount of assistance being sought;

G. A list of existing available data which could be used to help analyze the problem;

H. A copy of a resolution transmitting the preliminary application to the Agency. The resolution must be passed at an official meeting of the governing body.

SPA109 PRELIMINARY APPLICATION DUE DATE. Preliminary applications shall be submitted semiannually not later than January 1 and July 1, except that during Fiscal Year 1977 there shall be only one due date for preliminary applications and that shall be 60 days after adoption of these rules.

SPA110 REGIONAL DEVELOPMENT COMMISSION REVIEW. The preliminary application shall be submitted to the appropriate Regional Development Commission for review and comment at least 45 days before the date on which applications are due in the Agency. Regional Development Commission may waive this requirement. Within 5 days of the time a preliminary application is submitted to the Regional Development Commission the applicant shall forward a copy of it to the Agency. The Regional Development Commission shall return the preliminary application with comments to the applicant in sufficient time to allow the applicant to submit the preliminary application to the Agency by the due date. Failure of the Regional Development Commission to complete its review of the preliminary application within 45 days shall be considered approval of the application by the Regional Development Commission, unless the applicant and the Regional Development Commission agree to an extension of the 45 day period. The applicant shall submit the preliminary application with the Regional Development Commission's comments to the Agency on or before the due date. The Regional Development Commission may submit to the Agency a list of applications from the region arranged in order of priority established by the Regional Development Commission. The Agency shall consider the Regional Development Commission's comments and

priorities when reviewing the preliminary application.

SPA111 APPLICATION REVIEW AND PRIORITY SETTING. The Agency shall have 30 days to review all preliminary applications. Incomplete and ineligible applications will be returned to the applicant with a statement citing the reasons, and shall not be considered for funding.

The remaining applications will be assigned a priority as follows:

1st Priority - Those preliminary applications which identify existing or emerging land use problems resulting from two or more of the following:

A. rapid population or economic growth or decline;

B. potential development in an environmentally sensitive area;

C. the addition or elimination of a major state or federal facility.

2nd Priority - Those preliminary applications which identify existing or emerging land use problems resulting from at least one of A, B, or C above.

3rd Priority - All other eligible applications.

Within each priority the application will be ranked

according to the magnitude of the problem. Based on the priorities and availability of grant funds, final applications will be requested by the agency through a letter of notification. The appropriate Regional Development Commission will be notified of the action taken on preliminary applications.

SPA112 FINAL APPLICATION. The final application may be submitted by an applicant that has received a letter of notification. Final application shall be submitted to the Agency as soon as possible after receipt of the letter of notification to prepare a final application. All final applications must be received by the Agency in a format conforming to SPA113 no later than 45 days after the date of the letter of notification. Final applications will be reviewed for completeness. Incomplete applications or applications substantially different than the preliminary application will be returned with a statement indicating the reasons and will not be considered for funding. Remaining applications will be funded based on the priorities and availability of grant funds. Receipt of a letter of notification by an applicant does not guarantee that a grant will be made to fund the final application.

SPA113 FINAL APPLICATION FORMAT. The final application shall contain the following elements:

A. Work Program/Schedule. A work program which contains the following:

1. A statement of the existing or emerging land use problem which is to be investigated with the grant. This statement should identify how the problem is affecting or will affect the recipient, and the means the recipient is willing to use to alleviate the problem.

2. A description of the activities which will be undertaken with the grant. The description of activities should identify expected products and should be in sufficient detail to enable the Agency to measure progress and to identify the person responsible for completion of each activity. The description should include expected completion dates, by activity. Each activity should be assigned to a specific staff member or consultant.

3. A statement identifying the way in which the governing body and the planning commission will improve their capability in land use decision making. A schedule should be included indicating when and how this will be accomplished.

B. Lead Agency. The grant recipient must identify an organization or an individual as the lead agency for the work program.

C. Local Share. A detailed statement identifying sources for the local share. The local share may be in cash or in-kind.

D. Signature/Resolution. The signature of the mayor, chairman of the county board or chairman of the town board. The governing body must transmit the final application to the Agency accompanied by resolution passed at an official meeting of the governing body.

SPA114 FUNDING PERIOD. Final applications approved for funding will be funded for one year. Work not completed within the one year period will be considered for funding in the next funding cycle along with other applications under the provisions of SPA111.

SPA115 GRANT RATIO. The grant shall not exceed 75 percent of the total first year cost. Grants for the second year of a multi-year project shall not exceed 50 percent of the total second year cost. Grants for the third year of a multi-year project shall not exceed 30 percent of the total third year cost.

SPA116 CONTENT OF CONTRACT. The planning grant contract shall be based upon the final application. It shall specify

the amount of the grant that shall be awarded to the recipient and shall be effective for a period of not more than one year. It shall include the assurance of the eligible recipient that it will provide the required local share and carry out the work program. For an application made jointly by more than one eligible recipient, only one contract shall be executed on behalf of all eligible recipients participating in the program. The Agency may grant one extension of not more than 90 days to enable completion of the work program.

SPA117 DISBURSEMENT SCHEDULE. The grant money shall be available to the grant recipient as follows: 50% during the first month of the contract; 40% upon completion of one-half of the work; 10% upon completion of a satisfactory evaluation.

SPA118 EVALUATION. 10% of the grant shall be withheld pending completion of a satisfactory evaluation by the Agency of the work performed. This evaluation shall take place within 30 days of the termination of the contract. The evaluation will include determination of whether:

A. The local share was contributed,

B. The work specified in the work program was completed, and

C. The results have been used by the governing body when making land use decisions.

If the grant recipient does not agree with the findings of the evaluation, it may request a hearing as provided in the administrative procedures act, Minn. Stat. §§ 15.0418 - 15.0426.

SPA119 REQUIRED REPORTS. The grant recipient shall submit quarterly work progress reports to the Agency on forms provided by the Agency.

SPA120 USE OF FUNDS. To carry out activities specified in the work program, grant funds may be used to: (1) pay existing staff; (2) Hire new staff; (3) Pay staff of another unit of government under a Joint Powers Agreement; (4) Employ a qualified consultant; (5) Pay other costs associated with the work program such as overhead, rental of space and equipment, purchase of supplies, printing and publishing. The purchase of equipment, space, land or buildings is not an eligible cost or in-kind contribution. Services rendered by state or federal departments or agencies shall not be used as in-kind contribution. Federal or state funds obtained from another grant program may not be used as in-kind contribution. The applicant must be able to demonstrate that staff or consultants have education and experience necessary to perform the tasks assigned.

SPA121 RECORDS. The grant recipient shall maintain, on forms supplied by the Agency, records of time spent by

staff on each task identified in the contract.

SPA122 DEVIATIONS. No grant funds may be used to finance deviations from the contract unless such deviations are approved by the Agency. No grant funds may be used to employ a consultant not specified in the contract unless approval is given by the Agency.

SPA123 MULTI-YEAR PROGRAMS. Multi-year work programs may be submitted. Receipt of a grant for the first year is not a guarantee that a grant will be received for the remaining years. Multi-year work programs will be funded one year at a time. Each subsequent year of the work program will be evaluated along with new applications in the manner prescribed in SPA111.

SPA124 AGENCY ASSISTANCE. Staff from the Agency will be available to assist the grant recipient with the following:

A. Preparation of the final application;

B. Selection of consultants;

C. Conducting of information, training or capability building meetings;

D. Technical assistance during the contract period.

SPA125 Funds appropriated for grants for Critical Areas Planning purposes by Laws of Minn. 1976, Chapter 167, and any future funding for such grants appropriated to the State Planning Agency, shall be distributed to those public bodies authorized by such acts, in accordance with the planning

requirements contained in the recommendations of the MEQC made upon findings of fact based upon the evidence submitted at the public hearing and as further adopted by the Governor, and the following guidelines:

A. No grants for preparing critical area plans and regulations shall be made for projects or portions of projects which go beyond the scope of the procedures required by the critical areas planning process.

B. No grants for preparing critical area plans and regulations shall be made to units of government for any plans and regulations or portions of plans and regulations prepared prior to the designation of the critical area by the Governor.

C. No grants for preparing critical area plans and regulations shall be made to units of government which cannot demonstrate a need for such funds occasioned by inadequate financial and personnel resources.

D. All other available funding from other units of government shall be considered when determining the amount of the grants for the critical areas planning process under these regulations.

E. The State Planning Agency reserves the right to award grants on a pro rata basis based upon

demonstrated need, in the event that the funds available are not sufficient to cover such demonstrated needs and the estimated funds needed for other critical areas for which a notice of hearing has been issued pursuant to MEQC 53(e) at the time of distribution.

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Adoption of Rules of the State Planning Agency Governing Distribution of Grants For Land Use Planning Pursuant to Laws of Minn. 1976, Chapter 167.

STATEMENT OF COMPLIANCE

I, DONALD A. KANNAS, Special Assistant Attorney General, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: 10 Sept 76

Donald A. Kannas

Donald A. Kannas
Special Assistant
Attorney General